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The Federal Government's Telephone Employment Verification System and California State Assembly Bill 507

Assembly Select Committee on Statewide Immigration Impact

California State Assembly Select Committee on Statewide Immigration Impact

The Federal Government's Telephone Employment Verification System and California State Assembly Bill 507

Report of the Hearing
Friday, December 8, 1995 at Los Angeles, California

0572-A

Reply to:
☐ STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
Phone: (916) 445-0965
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Reply to:
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12009 EAST FIRESTONE BLVD.
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Assembly
California Legislature

GRACE F. NAPOLITANO
ASSEMBLYWOMAN, FIFTY-EIGHTH DISTRICT
Serving the cities and communities of Los Nietos, Montebello, Norwalk, Pico Rivera, Santa Fe Springs, South El Monte, South Whittier, Whittier

COMMITTEES:
BUDGET
TRANSPORTATION
LOCAL GOVERNMENT
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
CHAIR:
BUDGET SUB. #1
HEALTH AND HUMAN SERVICES
WOMEN'S LEGISLATIVE CAUCUS
SELECT COMMITTEE ON STATEWIDE IMMIGRATION IMPACT
SELECT COMMITTEE ON CALIFORNIA'S CHILDREN
SELECT COMMITTEE ON THE AMERICAS

SELECT COMMITTEE ON STATEWIDE IMMIGRATION IMPACT
TENTATIVE HEARING AGENDA
Friday, December 8, 1995
9:00 a.m. - 12:00 p.m.
Los Angeles State Building
107 South Broadway
Auditorium, Room 1138
Los Angeles, CA 90013

"THE FEDERAL GOVERNMENT'S TELEPHONE EMPLOYMENT VERIFICATION SYSTEM AND CALIFORNIA STATE ASSEMBLY BILL 507"

I. WELCOME

II. INTRODUCTIONS

III. FEDERAL AGENCIES (30 minutes)
Dick Rogers, District Director, Los Angeles, U.S. Immigration and Naturalization Service
John Nahan, Director, SAVE, U.S. Immigration and Naturalization Service
Peter Spencer, Assistant Regional Commissioner, Social Security Administration

IV. STATE AGENCIES (30 MINUTES)
Jose Millan, Assistant State Labor Commissioner
Jan Morikawa, Assistant Deputy Director, Employment Development Department
Frank Ricchiazzi, Assistant Director, Department of Motor Vehicles

V. EMPLOYERS (50 minutes)
Charles Bonaparte, Owner, El Gallo Giro
Robert Davis, President, St. John Knits
Virginia Valadez, Human Resource Manager, GT Bicycles, Inc.
Craig E. Gosselin, Vice President and General Counsel, Vans
Stanley Kyker, Executive Vice President, California Restaurant Association

VI. EMPLOYEE ORGANIZATIONS (40 minutes)
Allen Davenport, Service Employees International Union, AFL/CIO
Alex Rooker, Communications Workers of America, Local 9400
Rudy Montalvo, Labor Representative, COPE
Christina Vasquez, UNITE
Steve Nutter, International Ladies' Garment Workers' Union
Luis Magana, California Farmworkers Organization

VII. COMMUNITY-BASED ORGANIZATIONS (40 minutes)
Rick Oberlink, Executive Director, Californians For Population Stabilization
Tom Saenz, Mexican American Legal Defense and Educational Fund
Ira Mehlman, Media Outreach Director, Federation for American Immigration Reform
Charles Wheeler, Executive Director, National Immigration Law Center

VII. WHERE DO WE GO FROM HERE?
Next steps of committee and call for legislative suggestions

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OPENING STATEMENT
By Assemblymember Grace F. Napolitano

The U.S. Immigration and Naturalization Service has recently expanded its Telephone Verification System pilot project from one employer in California to more than 236 in Southern California.

While the idea of a simple method of verifying employment eligibility may be appealing, there are many problems of grave concern to California with respect to a nationwide telephone employee verification system -- problems that must be resolved prior to expansion of the TVS (telephone verification system).

Last year, I introduced AB 507 because it would represent the only measure that allows the State of California to test and develop criteria reflecting the concerns of the diverse ethnic communities of our state with regard to the employment of residents and non-residents alike.

In addition, AB 507 would require that ALL employees have their eligibility be verified -- not just those who look and sound different. It would also impose controls protective of the rights of employers and employees alike, including civil and privacy rights.

Currently, there is a push in Congress to expand the federal TVS program to a national verification system, but there is little discussion about California's needs.

Realistically, the federal government must address California's concerns about an employee verification program by answering the following questions:

1. Is it possible for both the INS and Social Security Administration to clean up their existing data bases, especially given the new increases in "breeder" document fraud?

The first TVS pilot demonstrated that the INS database alone had serious problems, as evidenced by the need for a secondary verification for 28% of all verifications.

It is vital that the data bases be completely cleansed prior to any such expansion. We must know more about which status are not likely to be reflected in the data base or if there are specific accuracy problems (double last names, spelling errors, etc.) and how to avoid "false negative" results prior to expansion.

2. Is it possible for the TVS system to achieve an error rate of 1% or less?

Currently, the error rates range from 15-20%. Even a 1% error rate will affect approximately 650,000 people annually because approximately 65 million people enter the work force each year.

3. Is the TVS system capable of being effective, reliable, protective of privacy and reducing discrimination?

There should be baselines for measuring discrimination, especially in reference to secondary verifications. Because the manual secondary verification is so time-consuming and cumbersome for employers, it could lead to mass firing of employees, the avoidance of hiring those who "look foreign" in the first place, and attempts by employers to seek other means of verifying status of employees, such as calling the Border Patrol or other government agencies.

4. Will there be stiff penalties for misuse of the system?

Misuse of the system should carry stiff penalties. Prescreening is a serious potential problem, as is unauthorized access to data and differential treatment between those who "look foreign" and others.

Perhaps the biggest questions of all are these:

5. Is it likely that the system will reach the sectors of the economy which employ undocumented workers?

Given the nature of the underground economy, this system is not likely to be used by unscrupulous employers who choose to unfairly compete.

6. If it is intended to be used merely as a tool of compliance for employers, how can we protect against discrimination and misuse of the system?

It is my hope that these and other questions can be addressed at this hearing today.

AMENDED IN ASSEMBLY MARCH 30, 1995

AMENDED IN ASSEMBLY MARCH 23, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL No. 507

Introduced by Assembly Members Horcher *and Napolitano* ~~Napolitano, Campbell, and Galleges~~
(Principal coauthors: Assembly Members Campbell and Gallegos)

February 17, 1995

An act to add and repeal Section 107 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Horcher. Employment: employee residence status: verification program.

Under existing law, the federal Immigration and Naturalization Service has established a Telephone Verification System pilot program that provides a limited number of California employers with automated telephone access to the federal Alien Status Verification Index, which contains information about the residency status of alien employees.

This bill would establish a 3-year pilot project, to be known as the California Employment Eligibility Authorization Telephone Verification System Pilot Project within the Division of Labor Standards Enforcement that would augment the federal pilot program and provide information

about the residency status of alien employees to employers voluntarily participating in the pilot project. The bill would require the division to select, *in a prescribed manner,* up to 25 employers to participate in the pilot project that represent a cross-section of employers in the state in terms of size and organization. The bill would impose specified requirements for employers participating in the pilot project and specified limitations on the use of information obtained from the verification system. The bill would prohibit use of the verification system for screening of ~~prospective employees,~~ *an applicant for employment, and would further prohibit use of the system* in a discriminatory manner, or as a threat or punishment. *The bill would require the division to establish written guidelines to assist participating employers in complying with specified requirements and prohibitions.*

The bill would require the Attorney General to act as legal counsel to the division with specified duties with respect to the organization and operation of the project including negotiation and execution of a memorandum of understanding with specified state and federal authorities, establishing the data base for the project, and the submission of a prescribed report to the Legislature no later than September 30, 1999.

The provisions of the bill would be repealed on January 1, 2001.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 107 is added to the Labor Code, to read:

107. (a) The Legislature finds and declares the following:

(1) Official records indicate that there are approximately 14,200,000 employees and 900,000 employers in the State of California.

(2) The State of California is impacted more severely than any other state in the United States from foreign

immigration, with more than 50 percent of all immigrants to this country residing in California.

(3) The population of the State of California has grown from under 7 million people in 1940 to more than 32 million people in 1995. In recent years California's population growth rate has exceeded that of India. This growth is fueled, in part, by illegal immigration.

(4) The United States Congress, in an attempt to control illegal immigration into this country and to refine the existing system for legal immigration, enacted the Immigration Reform and Control Act of 1986 (Public Law 99-603). This act makes it unlawful for an employer knowingly to hire, recruit, or refer for a fee an unauthorized alien, or to continue to employ an alien whom the employer knows has become unauthorized to work. An employer is subject to civil liability and criminal fines for violation of these provisions. Under this federal law, employers are required to verify, under penalty of perjury, that a job applicant is authorized to work in the United States. The federal law also requires employers to verify the identity of the job applicant and to maintain records for at least three years.

(5) The federal Immigration Reform and Control Act of 1986 also makes it an unfair immigration-related employment practice for an employer of four or more employees to discriminate against an individual, other than an unauthorized alien, in the process of recruiting, hiring, referral for a fee, or dismissal because of national origin or citizenship status.

(6) The verification requirements of this federal law, along with its employer-sanction provisions, have caused widespread concern among employers in California.

(7) In September of 1994, the United States Commission on Immigration Reform issued a report that recommended the development of a simple, fraud-resistant system for verifying the eligibility of persons to work in the United States using data bases of the Immigration and Nationality Service and the Social Security Administration.

(8) The Immigration and Naturalization Service established a three-year Telephone Verification System pilot program in 1992. The federal Telephone Verification System provides a limited number of California employers with automated telephone access to the Alien Status Verification Index (as specified at page 24472 of volume 59 of the Federal Register (May 11, 1994)). The Alien Status Verification Index contains information about the residency status of alien employees.

(9) It is in the best interest of the people of the State of California to establish and operate a pilot project to augment the federal Telephone Verification System in cooperation with the federal government for the purpose of protecting California employees and assisting California employers to comply with federal law with respect to the employment of unauthorized aliens *and thereby reduce the incidence of violations of the federal law and resulting sanctions imposed thereunder*.

(b) As used in this section:

(1) "Division" means the Division of Labor Standards Enforcement.

(2) "Participating employer" means an employer selected by the Labor Commissioner to participate in the pilot project.

(3) "Pilot project" means the California Employment Eligibility Authorization Telephone Verification System Pilot Project.

(c) Beginning June 30, 1996, the Division of Labor Standards Enforcement (hereafter referred to in this section as "division") shall develop, implement, and operate until June 30, 1999, a pilot ~~program~~ *project* to augment the federal Telephone Verification System, to the extent the federal government cooperates with the division in the implementation of the ~~program~~ *project*. The purpose of the pilot ~~program~~ *project*, to be known as the California Employment Eligibility Authorization Telephone Verification System Pilot Project, is to expand the federal Telephone Verification System to provide

information about the residency status of alien employees to employers statewide.

(d) The division shall administer the California Employment Eligibility Authorization Telephone Verification System Pilot Project and shall consult with the federal Immigration and Naturalization Service for the purposes of training personnel for implementation of the pilot project in cooperation with federal authorities.

(e) (1) The pilot project shall be a voluntary program limited to 25 employers that the Labor Commissioner determines represent a cross-section of employers in terms of both size and character of organization. The division shall establish and publicize criteria for the selection of employers to participate in the pilot project. The division shall select the employers to participate in the pilot project from among applicants.

(2) *In selecting employers to participate in the pilot project, the division shall obtain information regarding past employment practices of each candidate in an effort to establish background information for purposes of evaluating the project. The division shall not use any information obtained during the employer selection process, relating to past employment practices, to support an enforcement action against an employer.*

(3) A participating employer shall be responsible for any actual costs related to equipment provided directly to that employer, such as point-of-sale devices, and may be required to pay a fee for each inquiry transaction utilizing the pilot project. The fee shall not exceed the actual cost of the inquiry transaction.

~~(3)~~

(4) A participating employer shall post and keep posted in a conspicuous location frequented by employees during the hours of the workday, and shall provide to every new employee, both orally and in writing at the time of hiring, information that explains in clear, nontechnical terms, the employer's participation in the pilot project and that the employer will check the employee's eligibility for employment using the pilot project verification system.

(5) Upon the request of an employee, a participating employer shall provide any available information concerning the pilot project and the verification system.

~~(4)~~

(6) A participating employer shall not utilize the ~~California Employment Eligibility Authorization Telephone Verification System for the purpose of~~ *pilot project verification system for the purpose of* verifying the employment eligibility of ~~a prospective employee~~ *an applicant for employment*. A participating employer shall use the system to verify the employment eligibility of all employees *who are newly employed during the employer's participation in the pilot project*, but shall not use the system as a threat or punishment, or discriminatorily as to particular employees or employee groups.

(7) A participating employer may obtain or disclose information relating to an employee through the pilot project verification system only with the written consent of the employee to whom the information relates.

(8) A participating employer shall not terminate the employment of an employee when the pilot project verification system indicates that a secondary authorization is necessary to confirm employment eligibility.

~~(5) A participating employer shall not terminate the employment of an employee based solely on information obtained through the use of the California Employment Eligibility Authorization Telephone Verification System that indicates the employee is ineligible for employment under the federal Immigration Reform and Control Act of 1986. The participating employer shall take appropriate action to confirm the information obtained from the system before this information may be used as a basis for the termination of an employee.~~

~~(f)~~

(f) The division shall establish written guidelines to assist participating employers in complying with the provisions of this section. These guidelines shall include,

but not be limited to, specificity as to those requirements and prohibitions set forth in subdivisions (e), (h), and (i).

(g) The Attorney General shall act as legal counsel to the division with respect to the pilot project and, in this capacity, shall provide general legal advice as requested by the division, or as deemed appropriate by the Attorney General, in connection with the pilot project, and shall perform the following duties:

(1) Negotiate and execute a memorandum of understanding with the federal Immigration and Naturalization Service, Social Security Administration, the division, Department of Motor Vehicles, and Franchise Tax Board that establishes the data base for the pilot project to allow participating employers to electronically verify the employment eligibility of their employees.

(2) Prepare and submit to the Legislature, no later than September 30, 1999, a report concerning the implementation, operation, and effectiveness of the pilot project. The report shall contain, but not be limited to, all of the following:

(A) A general review and assessment of the pilot project, including an evaluation of the feasibility of continuing the verification system beyond the expiration of the pilot project. *The evaluation shall include a discussion of the basis for objectively evaluating the project, including the establishment of performance standards and benchmarks, to the extent possible.*

(B) A summary and analysis of the results of a poll of the participating employers and their employees about the pilot project as implemented to determine their problems, concerns, and suggestions for improvement.

(C) A description of any problems with the data base, equipment, or other technical aspects of the verification system.

(D) A discussion of any legal issues encountered through the implementation of the pilot project related to privacy rights of, or discrimination against, employees or prospective employees, along with recommendations

for compliance with federal and state laws that protect privacy rights or prohibit discrimination.

~~(g)~~

(h) Utilization of the pilot project verification system does not exempt an employer from the reporting or any other obligations imposed by the federal Immigration Reform and Control Act of 1986, including, but not limited to, the prohibitions against discrimination in recruiting, referral for a fee, hiring, and discharging of an individual because of his or her national origin or citizenship status.

~~(h)~~

(i) Nothing in this section shall be construed to authorize the establishment, issuance, or utilization of a state employment authorization or identification card.

~~(i)~~

(j) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

Testimony of

Richard K. Rogers
District Director
Los Angeles District Office

Immigration and Naturalization Service

before the

California State Assembly Legislature

Select Committee

concerning

The Verification Information System (VIS)

December 8, 1995

9:00 a.m.

Los Angeles State Building

Los Angeles, California

Mr. Chairman and members of the Select Committee, I appreciate the opportunity to be here today to discuss with you some of the new initiatives the Immigration and Naturalization Service (INS) is taking to secure jobs for United States workers by preventing the employment of unauthorized workers.

Earlier this year the President announced a major initiative for addressing illegal immigration. The initiative emphasizes gaining control of our borders. Because employment is the single most important incentive for illegal immigration, the President's initiative focuses on strengthening our worksite enforcement while improving the methods of verifying employment authorization in a non-discriminatory manner. These activities are key components of the multi-year border control strategy that has been successfully underway for the past two years.

American jobs belong to lawful workers. For too long, too many jobs in America have gone to illegal immigrants and work has been a tremendous magnet for illegal immigration. President Clinton is committed to improving the enforcement of our immigration laws. With new strategies, unsurpassed commitment, and the deployment of new resources, we are working to create a seamless web of enforcement from the border to the workplace.

The Telephone Verification Pilot Program

As authorized by the Immigration Reform and Control Act (IRCA), INS developed and initiated the Telephone Verification Pilot (TVP) as an alternate system for employers to confirm the employment eligibility of newly-hired, non-citizen employees. The TVP is a voluntary program that allows participating employers who have complied with the Form I-9 verification procedures to access the INS Alien Status Verification Index (ASVI) data base using a personal computer to confirm the employment eligibility of newly hired non-citizen employees. Employers may not initiate the TVP request for verification until after a non-citizen employee is hired and his/her Form I-9 is certified.

The first phase of the TVP Pilot began on March 30, 1992. Nine employers in five states with large non-citizen populations (California, Florida, Illinois, New York, and Texas) volunteered to participate in the Pilot. All nine employers in Phase I of TVP strongly endorsed its technical feasibility and its benefit to employers. The TVP deters fraud since it immediately checks and verifies with the INS the employee's status. This system reduces the value of fraudulent documents because they cannot be verified by INS records. This type of verification gives employers greater

assurance that non-citizen employees hired and verified are truly authorized to work in the United States.

Verification Information System

The INS is currently conducting Phase II, the Verification Information System (VIS). The VIS is a demonstration project focusing on automated verification of employment eligibility. The VIS involves over 200 employers in the State of California and was developed by the INS to enable employers to quickly establish the employment eligibility of newly hired non-citizens, allowing employers to more easily comply with immigration laws. This breakthrough project is a key part of the Clinton Administration's continuing commitment to crack down on illegal immigration by helping remove access to jobs.

The VIS is a voluntary program that allows participating employers, through a personal computer, to query the INS data base to confirm the eligibility of non-citizens to work in the United States. The system provides employers with a quick and accurate way of verifying the status of non-citizens, while safeguarding their rights and protecting against the potential for discrimination. More than 220 employers with over 80,000 employees are participating in the program, primarily in Santa Ana and the City of Industry in Southern California.

In recruiting participants for the pilot, INS sought employers with a workforce of at least 50 employees that fall into the following categories:

- employers that employ an above-average number of non-citizen workers;

- industries that have been found to employ a disproportionate number of non-authorized workers (high-risk employers);

- employers that experience frequent turnover or hire large number of workers on a seasonal basis.

Employers began accessing the INS data base on September 25, 1995. The VIS electronic verification procedure requires no more than three possible steps. Participation in the VIS obligates an employer to proceed through as many of the three steps as is necessary to verify the newly hired non-citizen employee's work authorization. The employer will conduct an initial automated verification inquiry by using a personal computer to access INS' ASVI data base. If employment authorization cannot be immediately provided at the initial query of the data base, or if there is a discrepancy between the data entered and the information in the ASVI data base, the employer is

instructed to institute a secondary verification request, this is also an automated query.

If the non-citizen employee's status remains unverified after completion of primary and secondary verification checks, the employee is allowed a third and final opportunity for verification of eligible status. The employee is then instructed to go to the local INS office to determine their eligibility status.

We are also providing employers with the tools they need to comply with the law, we must recognize that there are employers who have and will continue to abuse the law. Our message to them is clear: If you abuse the law and knowingly hire illegal workers we will find you, we will fine you, and if you continue to abuse the law you will face criminal prosecution. We are coupling our verification effort with a pilot program that intensifies our investigations of workplaces in the same two communities of the City of Industry and Santa Ana.

New Administration Verification Pilots

The Administration is committed to establishing an effective and non-discriminatory means of verifying the employment eligibility of all new employees. The work that we are doing closely follows the Commission on Immigration

Reform's recommendation to test, on a pilot basis, various techniques for improving workplace verification.

In addition to expanding the VIS described above, we are taking steps to improve the quality of INS data to provide more accurate and timely responses through on-line access in the VIS program and other pilots.

We are developing four pilots that test different concepts and technologies, and safeguards against discrimination. All will have extensive evaluation activities built into their design.

Pilot 1: Expansion of VIS - In 1996, we plan to expand the VIS pilot to up to 1,000 employees in selected cities nationwide. We have begun to design this expansion and will incorporate the lessons we expect to learn from the current VIS pilot with 200 employers. In particular, we will examine false claims to citizenship and determine whether it will be necessary to pursue a broader verification effort rather than continue to focus on a simpler VIS-like system that focuses primarily on checking the status of non-citizens.

Pilot 2: A Two-Step Process - The second pilot is a two-step verification process. The plan is to verify the status of all persons newly hired--United States citizens as well

as non-citizens. A two-step approach to employment verification is premised on the belief that all new hires should be verified electronically. The first electronic check would be with the Social Security Administration (SSA) which has records on all authorized U. S. workers. For non-citizens whose work eligibility can not be confirmed by the SSA records check, there are potential procedures such as requesting employers to verify with INS that can be used. There are many options on the design of this pilot and we are beginning to explore all of them. We could select different types or sizes of employers in different states and types of areas, use different technologies to access the data bases, and even vary the process and the type of documents, if any, that an employee would show an employer.

Pilot 3: SSA/INS Database Matching and Simulation - This pilot involves a computer simulation that matches real names between databases but does not check the identity of those people. For this purpose, the goal is to determine the problems which could be experienced in linking INS and SSA data bases. The SSA data base includes Social Security Numbers (SSNs) on virtually all lawful residents of the United States. The INS data bases are logically focused on the non-citizen population and are accessed by Alien-number, or for some nonimmigrant visitors, by the number on their arrival/departure (I-94) document. The INS data base includes the SSN on a small portion of cases in its files.

We have looked at the SSA and INS data bases for ways of matching, linking, and devising strategies for making the two data bases compatible.

Our plan for FY 96 is to pursue this simulation more extensively and systematically. Technically-linked data bases, however, are a test of just one part of a potential verification system. Although some INS and SSA records have been matched electronically, we have not verified that these matches are accurate. We have not added records or made any other systems changes on the basis of the electronic match, nor, to date, have efforts been made to verify if the match was correct. The concept of a simulation protects all information from use in real life situations to prevent problems that may arise related to privacy or confidentially of records.

Pilot 4: Data base changes - The fourth pilot is, in many ways, is already in progress. INS is working to improve the completeness, accuracy and timeliness of its data base. SSA is looking into how it could adapt its data base for use in an on-line query capacity that would allow employers or public agencies to gain restricted access to a part of the data system.

These initiatives involve reducing error and creating a capacity for resolving any errors which might now exist.

The goal of these improvements is to enable INS to provide timely and accurate responses to verification requests, whether the system is the verification system currently being piloted, or another system which may be tested in the future. Obviously, accurate and timely data has benefits to INS which far transcend verification of eligibility for employment.

INS will develop and implement a new, tamper-resistant Employment Authorization Document (EAD) to deter fraud and allow easier detection of fraudulent documents. In addition, reducing the number of documents that can be used as evidence of employment authorization and identity is of vital importance in our efforts to combat the use of forged and counterfeit documents and to promote employer compliance with the law.

Along with the projects I have already discussed, we continue to improve programs that have long been in existence. In 1989, the Systematic Alien Verification for Entitlement (SAVE) program was established and implemented on a permanent basis in accordance with the IRCA requirement for a cost-effective system to verify the status of aliens applying for certain Federally-funded entitlements. The INS established the Alien Status Verification Index (ASVI), a nationally accessible data base of selected immigration status information on over 50 million records. There are

presently 128 SAVE user agencies located at over 32,000 sites throughout the nation. Since implementation of the SAVE program in 1989, there have been more than 23,000,000 inquiries into the ASVI database.

Conclusion

The Administration's actions and intent are clear: we will move effectively, efficiently, and wisely to increase the capacity to verify the lawful status of new employees and persons who seek public benefits. Our overall illegal immigration control strategy requires it and, we believe, the American people demand it. We look forward to continuing to work with the Committee and the State on this very important issue. Thank you for this time and I will gladly respond to any questions you may have.

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE
Washington, DC 20536

NEWS RELEASE

Contact: Media Services
Office of Public Affairs
(202) 514-2648 Fax: (202) 514-1776

October 31, 1995

INS Kicks Off New Partnership with Southern California Businesses To Ensure Employees Are Legal

SANTA ANA – Immigration and Naturalization Service (INS) Commissioner Doris Meissner today formally kicked off an innovative new project, the Southern California Verification Pilot, designed to help employers ensure that their employees are legally authorized to work while protecting the rights of legal immigrant workers.

The pilot is the latest step in the Clinton Administration's continuing efforts to crackdown on illegal immigration by making it harder for illegal aliens to cross the border and by eliminating their ability to get jobs.

This verification project provides employers with a way to quickly verify with INS, through a personal computer, whether their newly-hired employees are authorized to work. In most cases, verification will be received within minutes. This swift feedback should ensure that jobs go only to legally authorized workers, and also should enable employers to avoid discriminating against non-citizen and minority applicants based on fears about their legal status.

"Most businesses in this country want to hire lawful workers," Meissner said, "but they have faced obstacles in trying to comply with the law. This Administration is committed to helping employers ensure that their workforces are legal and to penalizing those who don't comply with the law."

She added, "This new system reduces the value of fraudulent documents because those documents will not be verified by the INS record check. And it gives employers greater assurance that non-citizen employees are truly authorized to work."

Meissner also announced that the Southern California Verification Pilot will be coupled with intensified investigations of workplaces in the area. INS is increasing its investigative strength by 150 percent in Santa Ana, the City of Industry and surrounding areas. New investigators will target illegal activity by employers who refuse to comply with employer sanctions laws.

"We are using a typical carrot and stick approach in the metro Los Angeles area," Meissner said. "We are encouraging employers to work with us to be sure they're in compliance with the law, and we are going to focus our enforcement efforts on those who break it."

INS is purposefully concentrating both pilot projects in the same two communities in order to test the impact of the complementary efforts in one discreet area. Meissner said the one-year verification pilot will include 223 employers, with more than 80,000 employees, concentrated in Santa Ana and the City of Industry—a geographical area that has historically had high numbers of illegal workers. Participating employers range from very large businesses to those which employ just 50 people.

Thirty-one percent of the businesses offer professional services, 20 percent are manufacturers, 14 percent are in the retail industry and the other 35 percent range from food and hotel services to a variety of other service providers. Businesses participating in the announcement included GT Bicycles, a bike manufacturing company with about 300 employers to Vans, a 500-employee shoe manufacturer to St. Johns Knits with over 2,000 employees.

"We believe that this project is one of the most important compliance tools ever made available by government to an employer," said Craig Gosselin, General Counsel of Vans, praising the value of the pilot program.

At the end of the year, the verification effort will be evaluated, modified and expanded to 1,000 employers from states with large immigrant populations. INS will also test three other methods for rapidly verifying a non-citizen's employment eligibility throughout the country in the coming year.

"Today, we are taking a significant step forward to control the problem of illegal immigration," Meissner said. "We look forward to working with businesses and communities across this country as we work to enforce our nation's immigration laws, protect our immigrant heritage, protect American jobs and protect the rights of all Americans."

– INS –

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

FACT SHEET

10/31/95

Southern California Verification and Employer Sanctions Pilots

The Southern California Verification Pilot was developed by the Immigration and Naturalization Service (INS) to enable employers to quickly establish the employment eligibility of newly hired non-citizens, allowing employers to more easily comply with immigration laws. This breakthrough project is a key part of the Clinton Administration's continuing commitment to crack down on illegal immigration by helping remove access to jobs.

The Verification Pilot is a voluntary program that allows participating employers, through a personal computer, to query the INS database to confirm the eligibility of aliens to work in the United States. The system provides employers with a quick and accurate way of verifying the status of non-citizens, while safeguarding their rights and protecting against the potential for discrimination. More than 220 employers with more than 80,000 employees are participating in the program, primarily in Santa Ana and the City of Industry in Southern California.

In recruiting participants for the pilot, INS sought employers with a workforce of at least 50 employees that fall into the following categories:

- Employers that employ an above-average number of non-citizen workers,
- Industries that have been found to employ a disproportionate number of non-authorized workers (high-risk employers), and
- Employers that experience frequent turnover or hire large numbers of workers on a seasonal basis.

Who is Participating in the Verification Pilot?

The 223 employers currently enrolled in the pilot are involved in a wide range of industries:

- 31% Professional Services
- 20% Manufacturing
- 14% Retail
- 11% Food / Service
- 7% Hotels
- 4% Health
- 3% Entertainment
- 10% Other

By the end of FY 1996, the program will have expanded to include 1,000 employers in selected cities across the country.

Background

Since the passage of the Immigration Reform and Control Act of 1986 (IRCA), employers have been held accountable for ensuring the people they hire have a legal right to work in the United States. IRCA requires employers to review documents that establish the employees' identity and eligibility to work in the United States. Employees must attest on Form I-9 to their work eligibility and employers certify that the documents presented appear on their face to be genuine and relate to the individual.

The weakness in this verification process is that employers may find it difficult to distinguish between legitimate documents and those that may be counterfeit or fraudulent documents. Inadvertent hiring of unauthorized aliens may result in the removal of employees from their jobs, sometimes at critical moments in time-sensitive schedules. Employers who overreact and try to avoid problems by hiring only those whom they believe to be citizens may be charged with practicing discrimination. For these reasons, many employers have expressed willingness to help INS test alternative methods of verification.

In addition to piloting the verification system, INS will implement another pilot program focusing on employer sanctions. Twenty new investigators (and 3 support personnel) will be concentrated in Santa Ana and City of Industry where they will pursue a stepped-up program of worksite enforcement. In addition they will work with other federal agencies and the public to gather and follow leads, establish a database to permit tracking of the number and type of leads received, and increase outreach to local employers. These investigators are part of 46 new positions provided by Congress specifically for employers sanctions pilot programs.

How the System Works

After an employer has reviewed a non-citizen employee's documents and verified his or her eligibility using the I-9 form, the employer initiates the automated primary verification process.

Primary Verification – The employer enters the new employee's Alien Identification Number ("A" number), first name initial, month and year of birth, hiring date, and employer access code into their computer system. This information is then checked against INS' Alien Status Verification Index (ASVI) database. Within seconds, an employer receives one of two responses from the INS: "Employment Authorized" or "Institute Secondary Verification."

Secondary Verification – If the "Institute Secondary Verification" message comes up, it is a signal that the primary INS database has not recognized the employee as eligible for employment and that INS must search other data sources with a longer

response time. Secondary verification provides a safeguard to employees by preventing the termination of employment of eligible non-citizen employees.

Another goal for the improved secondary verification is to reduce to a minimum the period needed to determine a new employee's work authorization. In the past, when verifications were done on paper and transported by mail, the timeframe for a response could run into weeks. Using INS' newly automated system, secondary verification can take as few as 3 days.

Unconfirmed Status – Employee's whose status remains unconfirmed after completion of a primary and secondary verification check are provided a third and final opportunity for confirmation of eligible employment status. In these infrequent cases, employees will be given 30 days to resolve their immigration status, during which time they will continue to be employed.

The employer will refer the employee to the Los Angeles INS District Office, where a special office has been set up to follow up on cases identified through the pilot project.

History of the Verification Pilot

The Southern California Verification Pilot is the second part of a three-phase project to test alternative verification systems. A first phase of an automated verification pilot (called the Telephone Verification System) began in March of 1992, with nine employers in five states with large non-citizen populations volunteering to participate (CA, FL, IL, NY, TX).

The success rate of the year-long pilot was extremely impressive. In more than 2,500 cases, 99.9 percent were satisfactorily resolved. In 7 of 10 cases, authorization was confirmed after the initial automated query. The remaining cases required secondary follow-up, which provided resolution within a 5-10 day period.

Since then, the system has been improved and changed from a telephone to a computer-based system. The secondary verification process was changed from one that required the employer to fill out forms and transmit the information by mail to an automated process that immediately follows the initial query of the system. The system also includes elements to maximize the privacy of information and minimize the potential for discrimination against authorized workers.

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Immigration and Naturalization Service

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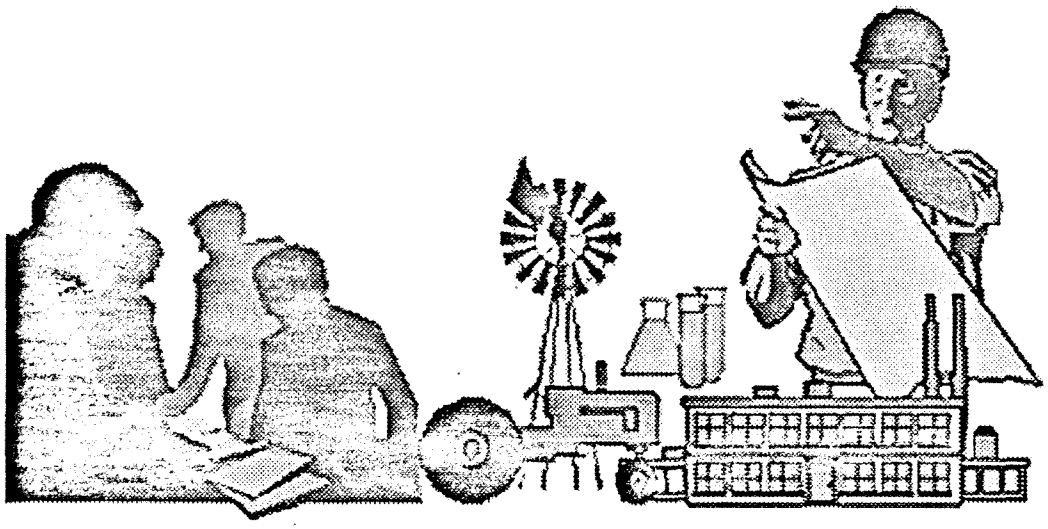
WORKSITE ENFORCEMENT

REDUCING THE JOB MAGNET



U.S. IMMIGRATION AND NATURALIZATION SERVICE • October 1995

"Border deterrence cannot succeed if the lure of jobs in the United States remains.... A major component of the Administration's deterrence strategy is to toughen worksite enforcement and employer sanctions. Employers who hire illegal immigrants not only obtain unfair competitive advantage over law-abiding employers, their unlawful use of illegal immigrants suppresses wages and working conditions for our country's legal workers.

"Our strategy, which targets enforcement efforts at employers and industries that historically have relied upon employment of illegal immigrants, will not only strengthen deterrence of illegal immigration, but better protect American workers and businesses that do not hire illegal immigrants."

– President Bill Clinton, February 7, 1995

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WORKSITE ENFORCEMENT: Reducing the Job Magnet

Introduction

For too long, illegal immigrants have entered this country undeterred, drawn here by the magnet of high wages and plentiful job opportunities. Decades of neglect left the U.S. Immigration and Naturalization Service (INS) without the personnel, funding or legal tools to enforce this nation's immigration laws effectively.

The INS has developed a strategy for combating illegal immigration which has three major components: enhanced border control, increased worksite enforcement, and expanded removal of criminal and other deportable aliens. While strengthened border enforcement results in preventing entry to significant numbers of illegal aliens at the border, employer sanctions enforcement and upholding labor standards are the primary means of reducing the magnet of work that draws illegal aliens to the United States. Worksite enforcement discourages illegal workers from crossing the border into the United States, supports American jobs for citizens and other legal workers, and identifies and then removes illegal aliens from the United States.

Congress enacted employer sanctions laws in 1986, prohibiting employers from knowingly hiring illegal workers. However, this law was not properly enforced, except immediately after passage of the Act, because the Federal government until recently lacked the resources and determination to do so.

"We are a nation of immigrants. But we are also a nation of laws."

– President Bill Clinton
1995 State of Union Address

The Clinton Administration has moved swiftly to reverse this history of failed immigration policies. With unprecedented commitment, this Administration has worked with Congress to provide INS with the increased personnel and funds needed to build a seamless web of enforcement from the border to the worksite.

Early results from stepped-up worksite enforcement efforts are encouraging:

- More than 11,000 illegal workers have been removed from jobs in worksites across the country in the last year alone.
- In one major operation, SouthPAW (Protect America's Workers), 4,044 illegal aliens were apprehended and $55.7 million in yearly salary opportunities were redirected to American workers. More than 2,700 jobs were quickly filled by legal workers.
- More than 1,500 fines were issued in Fiscal Year 1995 to employers who knowingly hired illegal aliens or violated employer sanctions laws.

With the addition of significant resources in the upcoming year's budget and reinforcement of strategies that already have proven effective, the Administration is sending a clear message to illegal workers and to employers who violate the law: American jobs belong to lawful workers.

The Revolving Door

For years, illegal aliens entering the United States have found employers ready and willing to hire them, often for wages which were substandard and under conditions which ranged from improper to illegal and inhumane. INS agents at the border and in major cities removed illegal aliens from worksites, but no action was taken against employers because, prior to 1986, it was not illegal to hire an illegal worker.

Prior to 1986, it was not illegal to hire an illegal worker.

Often, aliens not authorized to work would be removed from a business one day, only to be replaced with other illegal workers the next day. Near the border, illegal workers removed from a business would simply cross again illegally and seek and find illegal employment, sometimes even returning to their old jobs.

The surge in aliens seeking U.S. employment in the 1980s led to the emergence of Asian and other organized crime groups who greatly expanded their alien smuggling operations. The smugglers operate ruthlessly, using torture, murder, rape and extortion to collect their smuggling fees, which can be $30,000 or more per alien. Smuggled aliens have been sold into slavery or forced into prostitution and other illegal activities to pay their debt.

Cases like the arrival of the *Golden Venture* smuggling ship in New York in June 1994 , the 1995 El Monte, California enslavement of illegal Thai garment workers, and the smuggling of Haitians and Dominicans through the Caribbean and Koreans across the U.S.-Canadian border highlight the dangers that illegal aliens continue to face by seeking illegal employment in the United States.

Sanctions – Removing the Magnet

In November 1986 Congress passed the Immigration Reform and Control Act of 1986 (IRCA). The law attempted to strike a balance between compassion and enforcement. Illegal aliens who could show they had entered the United States before 1982 were eligible for legalization. And for the first time, the new law instituted employer sanctions, a common prohibition in most other industrialized nations, to deter illegal immigration to the United States. The new law also included anti-discrimination provisions to protect authorized workers.

Under IRCA, it became illegal for an employer to knowingly hire an unauthorized alien worker. Every employer is required to complete an I-9 Employment Verification Form on each employee hired after passage of the Act. Employers verify identity and employment eligibility by reviewing documents

presented by the employee. Employers who fail to comply can be fined and, in the most serious cases, prosecuted for criminal violations.

The new law assumed that, with strong voluntary compliance by employers, INS would be able to direct its limited enforcement resources toward the relatively small number of employers who refused to comply with the law. Illegal workers in the United States would be unable to secure employment and would go home. With the magnet of jobs reduced, fewer aliens would attempt to cross the border illegally.

Today, however, almost 10 years after the passage of IRCA, the promise of employer sanctions is yet to be fulfilled. While voluntary compliance by employers is high, illegal workers are still employed in substantial numbers. This is because the Federal government, until recently, has not made employer sanctions a sufficiently high priority.

The Counterfeit Document Threat

Employers who make a good-faith effort to comply may still have significant numbers of illegal workers. This results from the ready availability of counterfeit documents, including "green cards," INS work authorization documents and Social Security cards, undermining the I-9 verification process of the 1986 law. Many I-9 verification documents are easily replicated with modern printing and copying equipment. This has resulted in an explosion of counterfeiters, vendors and documents.

Many I-9 verification documents are easily replicated with modern printing and copying equipment.

The proliferation of counterfeit documents has undermined the original enforcement strategy of employer sanctions. INS cannot simply target non-complying businesses, since compliance does not necessarily mean the absence of illegal workers. In addition, INS enforcement mandates have been expanding while funding for the enforcement of employer sanctions declined. In past years, fewer agents with expanded enforcement responsibility translated into less time devoted to employer sanctions enforcement.

Progress and Initiatives

As a companion to its border control strategy, the Administration has asked Congress for substantial new funding and has begun several initiatives to improve worksite enforcement. Many of these initiatives are still in development and in the early stages of implementation, but the initial results hold great promise. These initiatives address three primary objectives:

- Expand and target employer sanctions enforcement against major violators and remove illegal workers from the United States,
- Combat the adverse effects of counterfeit documents on employment verification, and
- Provide employers with a reliable, secure and easy verification process.

OBJECTIVE – Enforcement

Fiscal Year 1995 marked the start of significant INS employer sanctions enforcement programs to concentrate enforcement resources against major violators. As a result, more than 11,000 illegal workers were removed from worksites and more than 1,500 fines levied on employers who violated sanctions laws during the year.

Operation Jobs

Operation Jobs, begun in Dallas and now underway in 18 states, recognizes that most employers want to comply with immigration hiring laws and do not want illegal workers in their workforce. Once information is obtained by INS on possible illegal workers at a business, INS officers conduct an audit of I-9 documents at the business to determine if illegal workers have used counterfeit documents and are employed. If found to have unknowingly hired illegal workers, the business is provided the opportunity to cooperate in removing the illegal workers, and is given a reasonable amount of time to recruit and train enough legal workers to replace the identified illegal workers.

INS agents discovered a 13-year-old boy in a Chinese restaurant in virtual slavery, being paid $2 an hour for 12-hour days.

When INS removes the illegal workers, the business suffers no disruption in its productivity, and legal workers gain employment. Operation Jobs has resulted in the removal of nearly 5,000 illegal workers from worksites, opening up nearly 4,000 jobs for legal workers. The innovative and cooperative approach of Operation Jobs has been honored with the prestigious Hammer Award, established by Vice President Gore to recognize excellence, initiative and creativity in government, as well as the Ford Foundation's Innovations in American Government Award.

Operation SouthPAW

The primary objective of Operation SouthPAW (Protect America's Workers) was to restore to legal workers jobs lost to illegal workers. SouthPAW focused on the southern states of Mississippi, Tennessee, Georgia, Alabama, Arkansas and northern Florida—areas not normally associated with the problem of illegal immigration. Agents and resources from several INS districts and Border Patrol sectors were combined into a single task force which operated across the six southern states and across INS jurisdictional lines. The operation also incorporated enforcement officers from the U.S. Department of Labor as well as local and state law enforcement manpower and resources.

Working with search warrants obtained from preliminary investigations, INS officers visited some 300 worksites throughout the South and removed more than 4,000 illegal workers from factories, construction sites, food processing plants, restaurants, hotels and farms. The average wage of the illegal workers was $7 an hour, but in Atlanta illegal workers were found earning more than $20 an hour as steel workers on high-rise construction sites. Reflecting the pervasive

exploitation of illegal workers, INS agents discovered a 13-year-old boy working in a Chinese restaurant in Jackson, Mississippi, held in virtual slavery, being paid $2 an hour for his 12-hour days.

As part of the overall operation, INS officers conducted follow-up surveys with employers, auditing I-9 compliance, providing employers with educational materials and information and verifying the status of replacement workers. At last count, more than 2,700 legal workers had replaced the illegal workers removed by Operation SouthPAW, and more than $55 million in annual salary opportunities had been restored to U.S. citizens and legal immigrant workers in an operation conducted for less than $750,000.

Other Enforcement Efforts

The number of illegal workers removed by Operation Jobs and Operation SouthPAW alone nearly exceeded the total number of illegal workers removed during the previous fiscal year. These operations demonstrate that INS can creatively and effectively enforce employer sanctions.

In conjunction with Operation Jobs, numerous separate enforcement operations have been conducted across the nation by INS officers. These operations have taken place in the meat packing industry in Nebraska, New Jersey and Illinois, in garment shops in the Los Angeles basin, and in agricultural regions across the nation.

These operations demonstrate that INS can creatively and effectively enforce employer sanctions.

By increasing worksite enforcement and expanding the use of sanctions against employers who knowingly hire illegal workers, INS can significantly reduce the number of illegal workers in the United States and improve deterrence at the border by removing the magnet of jobs for illegal workers. In addition, recent INS worksite operations have shown that the removal of illegal workers leads directly to job opportunities and employment for American citizens and legal immigrant workers.

Increased Enforcement Officers and Resources

The Administration has proposed a budget for Fiscal Year 1996 that will provide INS with an additional 604 officers and support staff and $45 million dedicated solely to worksite enforcement. More than 450 of these officers will fill positions as Immigration Agents, a new position within INS developed specifically for employer sanctions enforcement and removal of criminal aliens. Immigration Agents will have extensive training in immigration law and enforcement, with particular emphasis on IRCA and employer sanctions. These new positions will free INS Special Agents to focus on counterfeiting, fraud, smuggling and complex case task force operations.

■ *OBJECTIVE – Combat Counterfeit Documents*

The proliferation of counterfeit immigration and related documents since passage of IRCA directly threatens an employer's ability to verify a prospective

employee's status. Beginning in 1989, the INS has responded to this challenge by revising the Alien Registration Receipt Card, commonly called a "green card," as well as acting to eliminate many old, easily copied INS "paper" work authorization documents, replacing them with the current Employment Authorization Document (EAD). In addition, new initiatives are expected to further curtail employment of illegal workers:

- **New "Hard" Documents** – INS has now begun the next stage in its efforts to combat counterfeit documents with the recent announcement of a contract for state-of-the-art card production technology. Centralized card production facilities will begin issuing a new version of the EAD in early 1996. This new "hard" card will incorporate the latest technologies, including a digitized photograph and fingerprint, holographic imagery and other security features. This document, by far the most counterfeit- resistant in INS history, will significantly "up the ante" for counterfeiters. The EAD will be issued to most non-resident aliens who obtain temporary work authorization. Future plans call for similar enhancements to the "green card" and the border crossing card.

New Tamper-Resistant EAD Card

- **Document Reduction Initiatives** – INS also has proposed a rule to reduce from 29 to 16 the number of documents that may be used for I-9 verification. The Clinton Administration is supporting legislation to further reduce the list to six. These changes would simplify the process for employers and further thwart the work of counterfeiters. Other legislative initiatives call for states to adopt standardized "hard" driver's licenses and birth certificates. These initiatives would eliminate use of counterfeit versions of those documents as "breeders" for obtaining other valid documents for employment verification.

- **Targeting Counterfeiters** – With congressional support, INS expects to receive an additional $5.4 million and 81 legal, management and Forensic Document Laboratory personnel to support investigations of counterfeit document producers and vendors. The addition of more than 450 Immigration Agents will also allow INS Special Agents to increase significantly the amount of time devoted to tracking down document fraud and smuggling.

■ *OBJECTIVE - Improve Verification*

INS has undertaken initiatives that provide improved employment verification processes that involve partnership arrangements with cooperating employers to strengthen compliance with the law.

- **Verification Pilot Program** – INS has initiated a verification pilot project in California. Under this project, at least 200 employers representing a broad range of businesses are able to verify INS work authorization documents provided by non-U.S. citizen workers by access to select information in the INS database. INS plans to expand this project to 1,000 employers by Fiscal Year 1997. The Verification Pilot Program is a follow-up to a successful 1993 test involving nine employers. The ultimate objective is to provide employers with a reliable, secure method of employment authorization to ensure compliance with the law, while ensuring privacy and anti-discrimination rights of workers.

The objective is to provide employers with a reliable, secure method to verify employment authorization.

- **Electronic I-9** – In cooperation with businesses, INS is studying methods and systems that allow employers to use information technology for creating and maintaining records of verification for their employees. This approach offers the potential for employing promising technology to reduce paperwork, time and storage space for employers while meeting worksite enforcement needs.
- **Social Security Pilot**– INS and the Social Security Administration are exploring ways to work with employers to verify the legal status of their employees more effectively.

Summary

INS has made significant progress in recent years toward meeting its obligation to control America's borders. Increases in funding and personnel for the U.S. Border Patrol, together with improved technology, additional modernized equipment, and enhanced physical and electronic barriers are making a difference.

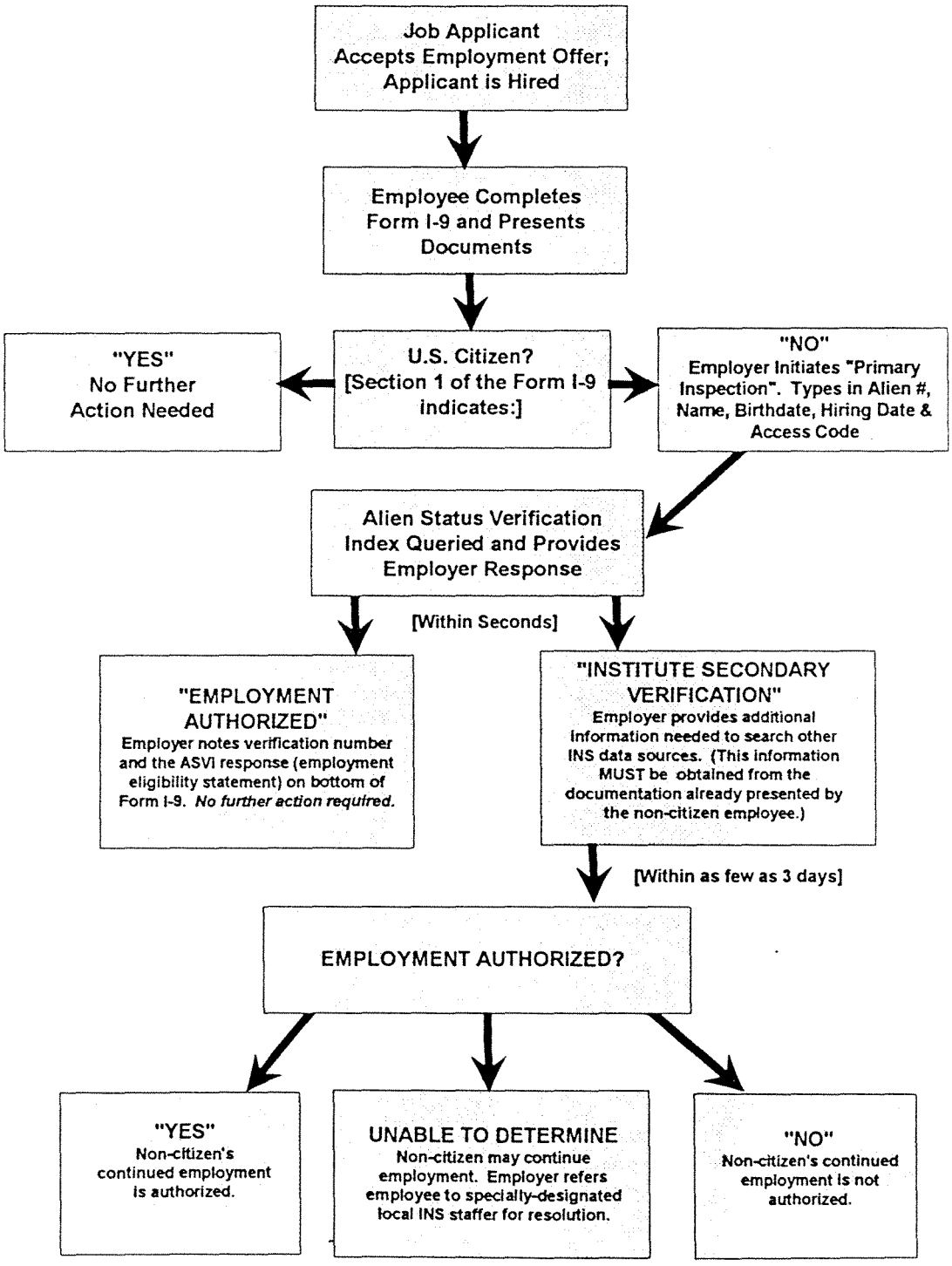
But stronger border control alone is not sufficient. The challenge of controlling illegal immigration extends far beyond the border. Employment is the magnet which draws the vast majority of illegal aliens to the United States and requires effective enforcement measures in the workplace.

INS is moving along several fronts to improve the effectiveness of worksite enforcement. Technology, legislative and regulatory changes, anticipated personnel and funding increases, and innovative initiatives all play a part as INS broadens its focus beyond the borders to fully implement its overall plan for controlling illegal immigration.

The effort to remove the magnet of employment means not only enhanced deterrence to illegal immigration, but also the restoration of jobs and wages for legal workers in America. Combined with strong border deterrence and the removal of criminal and other deportable aliens, the INS commitment to effective worksite enforcement is part of the Clinton Administration's program to ensure the security of the nation's borders, preserve U.S. jobs and protect communities for all Americans—citizens and legal immigrants alike.

Produced by
The Office of Public Affairs
U.S. IMMIGRATION AND NATURALIZATION SERVICE

Pilot Verification Procedures



Prepared 10/31/95 by Planning & Analysis, WR

INS EFFORTS TO ELIMINATE ILLEGAL WORKERS' ACCESS TO JOBS

IMPROVE EMPLOYERS ABLITY TO VERIFY EMPLOYEES' WORK ELIGIBLITY

- **Test Telephone Verification Method with 9 Employers**
  Phase I Pilot Project began 1992

- **Test Personal Computer Verification Method w/200 employers**
  Southern California Verification Pilot, Phase II began Sept. 95

- **Launch 4 Additional Pilots in FY96**
  Awaiting Congressional funding

- **Use Electronic Version of the I-9 Form**
  INS Developing

COMBAT COUNTERFEIT DOCUMENTS

- **Issue New State-of-the-Art Tamper Resistant Green Cards and Employment Authorization Cards**
  Production Equipment Contracted in October 1995

- **Reduce Number of Documents To Be Used for I-9 Verification**
  Urging Congress to Pass Legislation Limiting Documents to 6

- **Target Counterfeiters with New Personnel and Resources**
  Asking Congress for an additional $5.4 million and 81 legal management and Forensic Document Lab personnel, as well as 450 new Immigration Agents

INCREASE ENFORCEMENT ACTIVITIES

- **Implemented Operation Jobs in 18 States**
  Started in Dallas, expanded throughout 1995

- **Launched Operation Southpaw in 6 States**
  Started in Atlanta in June 1995

- **New Enforcement Officers and Resources**
  Awaiting Congressional approval of 604 officers and support staff and $45 million dedicated solely to worksite enforcement

ORANGE COUNTY BUSINESS

Photos by KEVIN P. CASEY / Los Angeles Times

'I think every employer throughout the country, hopefully, will be able to get on this program at one time or another.'

VIRGINIA VALADEZ
Human resources manager
GT Bicycles

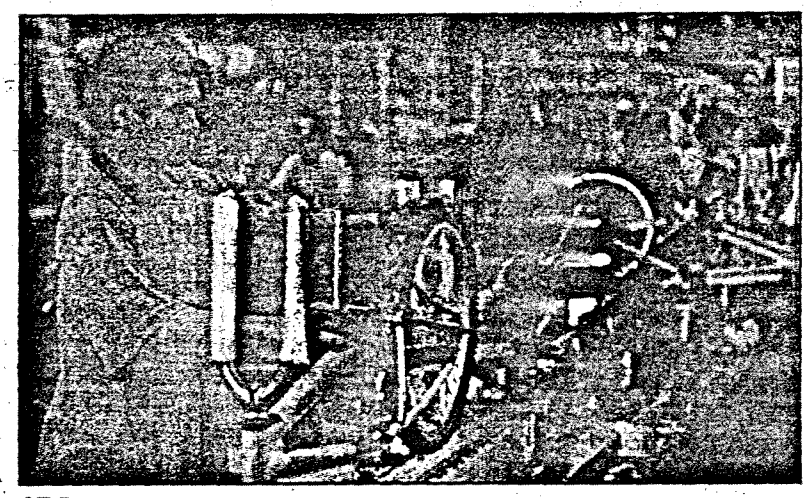
They're On-Line With INS

O.C. Firm Part of Pilot Program That Screens Workers

By LESLIE EARNEST
SPECIAL TO THE TIMES

SANTA ANA—Virginia Valadez tapped the information about the recently hired employee on her keyboard and barely had time to pause before the Immigration and Naturalization Service program shot back a response.

"He's authorized," Valadez pronounced, pointing with satisfaction at her computer screen. The process has become routine for Valadez, human resources manager at GT Bicycles. The Santa Ana bike manufacturing company is one of 231 firms participating in a pilot program that verifies whether non-citizens are legally authorized to work in the United States.



GT Bicycles in Santa Ana can check eligibility of non-citizen workers.

Since Oct. 1, Valadez has dipped into the INS-generated database to determine the eligibility of 31 employees at GT Bicycles and Rite-Way Products, the company that distributes GT bikes. As of Friday, all but two have been confirmed that they are eligible to work.

INS commissioner Doris Meissner has called the pilot project a major breakthrough in the identification of eligible workers. Valadez says it is a godsend for companies flooded with applications from job-seekers who are not citizens.

"I don't see how it cannot be the wave of the future," Valadez said. "I think every employer throughout the country, hopefully, will be able to get on this program at one time or another."

The new Verification Information System culled at least 185 ineligible workers from the approximately 1,000 people screened between Sept. 25 and Nov. 21, said Richard Rogers, the agency's Los Angeles district director.

Rights advocates have expressed reservations about the system, but Rogers said the INS has received no complaints since the first company signed on in September. Other businesses are now clamoring to become part of the system, he said. About 60% of the participating companies are from Orange County.

"I honestly believe we're now able to provide what the employer needs to keep the work force clean of aliens using counterfeit documents and aliens not entitled to be employed," Rogers said.

The INS is concentrating its efforts on Santa Ana and the City of Industry, cities where the use of counterfeit documents has been a problem in the past and where government officials and businesses are receptive to the program, Rogers said.

The companies were not selected because of past problems with the INS, although some have had difficulties regarding the hiring of ineligible workers in the past, Rogers said.

Participation in the program, which is scheduled through 1997, is voluntary.

Current law requires that employers examine a prospective worker's documents—which may include a green card, Social Security card or passport—and then complete forms attesting to the employee's eligibility to work.

Without access to the INS databank, participating employers say, it was becoming increasingly difficult to determine

Please see INS, D4

INS: Workers' Rights Advocates Express Reservations About System

Continued from D1

whether the documents were genuine.

Numerous job hunters, using increasingly sophisticated counterfeit papers, have managed to skirt a 1986 law that prohibits the employment of illegal immigrants.

"We get a lot of non-citizen applicants," Valadez said. "It was just a matter of time [before] we innocently hired people whose identification was not valid."

Employers say the verification program has eliminated much of the uncertainty.

"It gives you a sense of security when you're trying to hire a strong work force," said Robert Davis, president of St. John Knits in Irvine.

Between Sept. 25 and mid-November, 104 St. John employees, mostly factory workers, were been checked via the INS database, which lists immigrants who have received documents verifying they are eligible to work in the country.

The vast majority were cleared to work, said Tony Krawczak, the company's director of human resources.

"It's going to be a great tool to help us in our hiring process," he said.

But such optimism might be premature, said Charles Wheeler, directing attorney for National Immigration Law Center, a Los Angeles-based legal services organization.

Wheeler said he still questions the databank's accuracy and whether it includes all non-citizens who are eligible to work.

"I think it's really too early to tell, frankly," Wheeler said. "We're concerned that the system will encourage employers to discriminate against immigrants who may not have the documents that are easily verified."

Anti-discrimination laws require that an employer hire an employee first and then verify his or her worker status.

Some critics have said the pilot program could be used to prescreen potential workers, increasing the likelihood of discrimination against an applicant who appears foreign-born.

Participating employers say they hire the workers and then screen them. Often, the INS program confirms an employee's eligibility immediately.

About a third of the inquiries, however, require further checking. In some cases, INS employees are enlisted to examine other files or databases.

Prospective employees whose eligibility still cannot be confirmed are given 30 days to visit the Los Angeles INS office to settle the matter.

So far, unconfirmed workers have not been flocking to the office, Rogers said.

"As far as I know, I haven't had anybody come in," he said.

Jacquelyn Cleary, director of human resources for Vans Inc., of Orange, referred five employees to the INS office after being unable confirm their eligibility.

She said none have returned for their jobs, but the new system has helped her confirm about 195 other people.

"I can sleep at night knowing that I've hired people that we won't have to terminate, she said, adding that it "really destroys our production when you hire an employee and . . . find out for one reason or another that they're not able to work.

"It creates a more positive relationship with the employees because we don't have to look at their cards and [say], 'Hmmm, is that you,?' "

Rogers said the INS expects to expand to 1,000 the number of companies using the databank.

"We have found over the years . . . that the majority of the companies want to comply and they're doing everything they can to comply," Rogers said.

"We just gave them another tool."

Plan to Block Illegal Workers Unveiled by INS

By PATRICK J. McDONNELL
TIMES STAFF WRITER

SANTA ANA—In the controversial first test of what could become a national model, U.S. authorities Tuesday unveiled a long-awaited program that will initially allow more than 200 Southern California companies to use a computer tie-in to verify whether new employees are legally authorized to work in the United States.

U.S. Immigration and Naturalization Service Commissioner Doris Meissner called the pilot project a major breakthrough toward developing broad, nationwide work-site verification—a longtime goal of authorities seeking to curtail job opportunities that encourage illicit immigration. The proliferation of false documents has allowed millions to circumvent a 1986 law prohibiting employment of illegal immigrants.

"Most illegal immigrants come here for jobs, so we have to look to the workplace," said Meissner, who outlined the pilot project during a

Please see PROJECT, A21

PROJECT

Continued from A1

news conference at a Santa Ana bicycle factory, one of the area employers that have signed up for the verification plan.

The Clinton Administration—eager to appear aggressive on the immigration issue in this pre-election year, particularly in California—is stressing work-site enforcement as a necessary adjunct to its much ballyhooed buildup along the U.S.-Mexico border. The pilot project, to be accompanied by increased visits by INS agents to work sites, will focus on two communities, Santa Ana and the City of Industry, where many illegal immigrants have found work.

"You have to bolster border enforcement by reducing the availability of jobs; otherwise pressure will just build up at the border again," Meissner said during a meeting at The Times after her Santa Ana appearance.

Rights advocates immediately expressed alarm at the plan, which they say is of dubious constitutionality, may violate privacy rights, and is likely to increase discrimination against all immigrants—and against any job-seekers who appear to be foreign-born. Several critics categorized the project as a first step in an incremental push toward the introduction of a national identification system, or even a mandatory ID card—which civil libertarians on the left and right consider an Orwellian anathema.

"The whole world is watching this system to see if the INS will be able to take it nationwide to become a Big Brother verification system for the whole country," said Charles Wheeler, directing attorney for the National Immigration Law Center, a Los Angeles-based legal services organization.

Said Lucas Guttentag of the American Civil Liberties Union: "This is the INS's Halloween trick or treat."

A likely result of the new system, civil rights advocates said, is that employers would illegally use the process to pre-screen potential workers. Under anti-discrimination laws, employers are supposed to verify workers' status only after they have been hired.

The verification initiative is emerging as calls are mounting in Congress for implementation of some kind of broad system to detect and ferret out illegal immigrants in the workplace, especially in California, home to up to half of the nation's more than 4 million illegal immigrants, many of them employed.

Meissner acknowledged that authorities hope to expand the pilot program to about 1,000 employers by next year. But she said that any plan to proceed with a national identification system—such as a

1 of 2

universal ID card or registry of eligible employees—could not go forward without congressional authorization.

The Clinton Administration is opposed to a national ID card and is seeking to move ahead on verification before a congressional decision on a national registry. A registry would require years to assemble and cost billions of dollars to prepare—while raising strong privacy concerns.

"Nothing can happen that requires all employers to take action unless Congress authorizes it," said Meissner, who stressed that employers in the pilot project were participating voluntarily.

The overall enforcement strategy, the commissioner said, is to focus in on the small minority of the nation's more than 7 million employers who knowingly hire illegal immigrants, often at subminimum wages. Complete verification allows legitimate employers to hire only those here legally, thus allowing agents to zero in on sweatshops and other violators.

"Most businesses in this country want to hire lawful workers," Meissner said, "but they have faced obstacles in trying to comply with the law."

Technological advances have just now allowed the INS to introduce the almost fully automated system, which officials called a much more sophisticated version of a previous telephone verification project involving nine employers nationwide.

Under the new system—launched in Southern California because it is the locus of the illegal immigration problem, one INS official said—participating employers use computers and a software program to tap into an INS-generated database and verify whether noncitizens are authorized to work.

The program unveiled Tuesday, officials conceded, is missing a major component: a mechanism to verify workers' Social Security numbers, which are widely faked.

Additional pilot projects are on the drawing board for next year, including one plan that will allow employers to tap into data from both the INS and the Social Security Administration. Checking Social Security numbers will eventually allow employers to verify the status of both foreign nationals and employees who claim to be U.S. citizens.

A central shortcoming of the verification scheme, critics say, is its reliance on the INS' notoriously inaccurate database.

However, Meissner said the INS database is much improved and termed the new verification system "fail-safe," since any worker whose status is not immediately verified will be passed on for a secondary check, which should not take more than three days. Those employees whose status remains unclear will be given 30 days to visit the INS and straighten out their paperwork, officials said. In practice, officials said, illegal immigrants probably will walk away from their jobs at that point.

In recruiting project participants, the INS sought companies with at least 50 employees and high percentages of non-citizen workers. The 223 firms enrolled in the project, with more than 80,000 workers, represent a wide variety of industries, including manufacturing, retail sales, food service, hotels and entertainment.

Participating employers extolled the verification plan, saying it removed the uncertainty about workers' status. Although the INS officially unveiled the project Tuesday, many employers have been using the system for about a month.

"It makes our job easier," said Bill Galloway, vice president of GT Bicycles, the Santa Ana manufacturer where authorities made the project public.

Under current law, employers must review the documents of all new workers and fill out forms attesting that the new hires are eligible to work in the United States, based on the employers' review of the paperwork. However, there has been no way for employers to verify the documents' authenticity.

The Washington Post

Saturday October 21, 1995

Aliens and Work Eligibility

AS CONGRESS moves to revisit immigration regulation this fall, much concern has been expressed about a proposal to strengthen enforcement of the law that bars illegal aliens from working here. It is legitimate for the government to protect the job market for citizens and legal aliens and to discourage illegal entry by removing the incentive for foreigners to come here in order to find employment.

Since 1986, it has been unlawful for employers to hire undocumented workers, but enforcing that prohibition has been difficult and often ineffective. Critical documents such as work permits and Social Security cards are susceptible to easy forgery and are being sold openly in areas with a high concentration of immigrants. So an easier and more secure system that will enable employers to check the immigration status of workers is being sought.

There has always been uneasiness over the idea of introducing national identity cards. These have a resonance of the worst kind of repressive society. In fact, a system much more similar to the credit card checks with which Americans are so familiar is being considered. And it is already being tested with good results. The Immigration and Naturalization Service, at the direction of Congress and President Bush, embarked on the first phase of a pilot project in March 1992. A group of nine employers, with work forces ranging from 130 to 50,000, used telephones to obtain information from INS data banks. Almost 2,500 aliens were checked through this system, and 236 were found to be ineligible for work. When adverse information turned up, a second, more thorough check was made automatically.

No one who was found ineligible after two reviews contested the finding, and no complaints of discrimination were filed. The employers liked the system, which saved paperwork and avoided the costs of inadvertently hiring ineligible workers and having to replace them later. All said they would even be willing to pay the government for this service.

Phase two of the experiment, which will involve 200 employers and add computer access, is about to begin. The final phase, using 1,000 employers, will start within the year. If the results continue to be satisfactory from the employers' point of view and free of civil liberties problems, which has been the case so far, national implementation will be worth considering.

Privacy is an important concern, and, of course, computer mistakes are always possible. But if misinformation is easily corrected, as it has been so far, and the data involved are limited to information that is already a matter of public record, fears should fade. In another year or so, the complete results of the pilot study will be available. Final decisions in legislative form should be postponed until then.

THE ORANGE COUNTY Register

11/1/95 METRO 4

INS inspectors don't wait for computers

IMMIGRATION: The agency sends extra teams to Santa Ana and Industry while it works on a high-tech verification system.

By MARTIN C. EVANS
The Orange County Register

SANTA ANA — Federal officials are working to perfect a pilot project that allows employers to check worker immigration documents via computer with the hope of eventually asking Congress to make the computerized checks mandatory.

At the same time, the Immigration and Naturalization Service is flooding the cities of Santa Ana and Industry with 18 additional workplace inspectors to ensure that employers are not hiring illegal workers.

INS officials said Tuesday at a news conference that the increase should allow them to double at least the rate of company inspections in the two cities. Until the increase, a maximum of 35 inspectors — and as few as 25 — worked the seven-county area that makes up the INS' Los Angeles district.

The voluntary computerized pilot program, unveiled Tuesday by INS Commissioner Doris Meissner at GT Bicycles in Santa Ana, allows employers to telephone a computer to find out whether the government has issued immigration papers for an individual. Noncitizen workers whose records cannot be found have 30 days to prove their immigration papers are valid.

"We do believe there needs to be a national employee-verification system," Meissner said.

Meissner said such checks shouldn't be seen as a step toward national identification cards — an idea that has engendered wide resistance — because employers since 1986 have been required to check the immigration status of their workers.

Meissner said she would wait to see whether the voluntary program needs adjustments to avoid unfairly burdening employers or workers before asking Congress to require participation.

"We would hope that Congress would one day make mandatory our employee-verification system," Meissner said.

Executives with the more than 200 companies participating in the experimental program — more than half of them in Santa Ana — praised the automated verification system, saying it has provided them assurances that hiring decisions would not come back to haunt them. Manufacturer GT Bicycles is among the businesses.

"It's a great deal for business because they can comply with

1 of 2

the law and know their employees are authorized to work," said Robert Davis, president of St. John Knits, an Irvine-based garment maker with 2,500 workers.

Davis said of 50 people his company hired in the past month, only one could not be immediately matched with INS records.

But some business leaders expressed concerns that the increased enforcement could make employers liable for unintentional errors.

"It looks like a velvet glove with a punch in it," said Tom Gardner, regional manager for The Employers Group, which represents more than 1,000 businesses in Orange County. "I think employers will be concerned that the more agents that are going through employers' records, the more opportunities for finding things."

Along with tightened border controls implemented last year in the San Diego area, the computer checks and increased inspectors are part of an effort to curb illegal immigration into California.

The screening program was hailed at the news conference by Santa Ana Mayor Miguel Pulido and Industry City Manager Chris Roper.

Robert Bach, INS policy and planning chief, said a smaller test of the computerized system two years ago failed to approve documented workers at acceptably high rates because the computer's records were incomplete. Bach said those rates should improve now that the records have been updated.

2 of 2

FOR RELEASE ON DELIVERY

STATEMENT ON

TELEPHONE VERIFICATION OF EMPLOYMENT AUTHORIZATION

BY

PETER D. SPENCER

ASSISTANT REGIONAL COMMISSIONER,
SAN FRANCISCO

SOCIAL SECURITY ADMINISTRATION

BEFORE THE
CALIFORNIA STATE ASSEMBLY
SELECT COMMITTEE ON STATEWIDE
IMMIGRATION IMPACT

DECEMBER 8, 1995

Madam Chair and Members of the Committee:

I am pleased to be here to discuss SSA's role in employment authorization verification. The Clinton Administration believes that worksite enforcement of immigration laws is a necessary and effective means of controlling illegal immigration, and is firmly committed to establishing an effective, non-discriminatory means of verifying the employment authorization of all new employees. In fact, the Administration has already taken a number of steps to address this issue, and I will review them today.

SSA's Role in SSN Verification

Let me begin my discussion today by briefly reviewing how SSA now verifies Social Security numbers (SSNs) and then discuss our plans for piloting new procedures to help prevent unauthorized work.

SSA has always had the capability to verify SSNs, which is an important function in ensuring accurate wage reporting and, ultimately, accurate benefit payments. Employers may immediately verify SSNs for payroll purposes by calling our 800-number or local office. Relatively few employers call, however, because they tend not to question the name and SSN provided by an employee. And although this option is available to employers, neither the 800-number nor local offices are equipped to handle large numbers of SSN verification requests.

With the expansion of the SSN's use over the years, especially as a result of widespread dependence on computers, SSA began to experience more and more requests for SSN verification for purposes other than the Social Security program. Many of these requests were from government agencies for the purpose of ensuring the accuracy of other Federal and State benefit programs, and automated data exchange systems were developed to comply with these requests.

One of the systems that was developed to verify SSNs for States is available to employers to verify SSNs. The Enumeration Verification System (EVS), which was designed to carry out SSA's role with respect to the Federal-State Income and Eligibility Verification System (IEVS), verifies SSNs based on data such as name and date of birth. Under Federal law, since the mid-1980's, each State has been required to have an IEVS to match financial information

One of the pilot projects is a two-step process using SSA and INS databases. Current plans call for 25-50 selected volunteer employers in California, Florida, Texas, New York, and Illinois to request verification of employment eligibility by submitting to SSA, by touchtone phone, a newly-hired employee's SSN, name, and date of birth. SSA will match that information against its database and will also check for citizenship/alien status coding. If SSA records indicate that the employee was not a citizen at the time he or she applied for an SSN card, SSA will advise the employer to verify with INS, using the employee's alien identification number, that the employee is authorized to work. We expect to begin the pilot on a small scale by Spring 1996 and to expand it to 1,000 employers by early 1997.

Conclusion

In conclusion, Madam Chair, we fully understand and share this committee's concerns about improving the integrity of the employment eligibility verification system. SSA will continue to assist employers in verifying employment eligibility.

Department of Industrial Relations

DIVISION OF LABOR STANDARDS ENFORCEMENT

JOSE MILLAN
STATE LABOR COMMISSIONER

Select Committee on Statewide Immigration Impact
Los Angeles State Building
107 South Broadway, Room 1138

August 8, 1995

State of California
Department of Industrial Relations

MEMORANDUM

DATE: December 8, 1995

TO: Select Committee on Statewide Immigration Impact

FROM: Jose Millan, Interim State Labor Commissioner
Division of Labor Standards Enforcement

SUBJECT: The Federal Telephone Employment Verification System, **(AB 507)**

Madam Chair and members of the Assembly Select Committee on Statewide Immigration Impact, my name is Jose Millan and I am the Interim State Labor Commissioner for the State of California. The Department is opposed to AB 507 because of our concern that the activities and scope of this project would require the Division to divert enforcement resources from current mandates, and would require the Division to carry out what amounts to another unfunded federal mandate.

The Division of Labor Standards Enforcement is one of several divisions within the Department of Industrial Relations (DIR). Within DIR, the Division of Labor Standards Enforcement (DLSE), headed by the State Labor Commissioner, is responsible for enforcing approximately 200 Labor Code statutes and 16 Industrial Welfare Commission (IWC) Orders. These laws and regulations establish California's minimum standards for wages, hours, working conditions and employment of minors. DLSE's 320 employees assist wage earners to collect unpaid or incorrectly paid wages, license certain employers in California, inspect businesses for compliance with California labor laws.

To fulfill its mandate, DLSE performs the following functions:

- Adjudicates wage claims and other employee/employer complaint actions.
- Investigates employee/employer disputes, including certain discrimination complaints.
- Initiates on-site inspections and audits of businesses.

- Issues citations for non-compliance of violations of the Labor Code Statutes and administrative regulations.
- Provides legal representation to qualified employees.
- Issues licenses, permits and certificates of registration.
- Collects and disburses unpaid wages.
- Generates revenue in the form of penalties and fees.

Most of the work of the Division involves determinations of an established employer/employee relationship, and we do not feel that participation in the pilot project as outlined in AB 507 would further or even compliment our existing mandates. The pilot project would involve having the Division verify the employment eligibility of employees and applicants for employment for pre-selected employers.

It is unclear what effect the recently handed down federal district court decision in *League of United Latin American Citizens, et. al. v. Wilson,* (1995) (Case #CV-7569 MRP) will have on the Division's enforcement program. The court in that case had determined that several of the classification, notification and cooperation/reporting provisions contained in California Proposition 187 were preempted by federal immigration law because they constituted a regulatory scheme "to detect persons present in California in violation of state-created categories of lawful immigration status and . . . to notify state and federal officials of their purportedly unlawful status . . ." (p. 59, slip opinion).

Among the sections of Proposition 187 found to be preempted by federal immigration law by the court was Section 9, requiring the state Attorney General to maintain records of and to transmit to the INS, all reports received from state agencies pertaining to persons who are "suspected of being present in the United States in violation of federal immigration laws." (p. 30, slip opinion). The court found such a notification and reporting provision to have no purpose or effect other than to further an impermissible immigration regulatory scheme at the state level.

Additionally, it is important for members of this committee to realize how vitally important it is for all employees to relay information concerning labor law abuses in the workplace to investigators of this Division while they are conducting on-site inspection. This working relationship is extremely important to the Division in

rooting out labor law abuses, particularly within the immigrant workforce in our state.

This is not to say that we are averse to working with any agency, state or federal, on the basis of mutual respect and cooperation, towards accomplishment of goals and objectives that fulfill our mandates. To this end, on April 12, 1995, my predecessor, Victoria L. Bradshaw, signed an MOU of cooperation with the INS in order to facilitate the Division's licensing of farm labor contractors and garment manufacturers. Under this MOU, the Division and the INS would share information concerning applicants for licensure in order to ensure that the Division would be licensing only those individuals and businesses who are in compliance with all applicable federal laws, including the laws that pertain to the verification of the work eligibility.

Rather than make the Division responsible for the determination of an employer's compliance with federal law, the Division deny the issuance of a business license to persons whom the INS has already determined to be in violation of federal immigration laws, and who have unaddressed employer sanction and penalties that are owed to the INS. To date, the INS has not counter-signed the MOU and its terms have not been implemented. A copy of the proposed INS/DLSE MOU is attached for your ready reference.

This concludes my presentation. I am prepared to answer any questions that you might have.

State of California PETE WILSON, Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
Headquarters
455 Golden Gate Avenue, Room 3194
San Francisco, CA 94102
(415) 703-4750

Victoria L. Bradshaw
State Labor Commissioner

April 12, 1995

Richard Rogers
District Director
Immigration and Naturalization Service
300 No. Los Angeles Street, Room 8108
Los Angeles, CA 90012

Dear Dick:

Enclosed you will find two signed copies of the Memorandum of Understanding (MOU) between our two agencies. For the most part, we only made cosmetic changes to your original draft. We basically tried to ensure that the terminology used in the MOU was consistent with the terminology used in our licensing and registration process.

If there are no further changes required by the INS, it would be easiest if you would have the two copies of the MOU signed and return one to my office for our records. If possible, in the near future we would like to get together with your staff and work out the procedures that both agencies will use to effectuate this MOU. Jose Millan will be our contact person for the purposes of this project. He can be reached at (415) 703-4750.

Thanks again for all your help and we look forward to a long and mutually beneficial relationship.

Very truly yours,

Victoria L. Bradshaw

Victoria L. Bradshaw
State Labor Commissioner

cc: Jose Millan

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

AND

THE STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

The United States Department of Justice, Immigration and Naturalization Service (INS), and the California Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE), share the common goal of removing the economic incentive which leads a small number of unscrupulous employers to exploit individuals who are working in this country in violation of Federal and State laws. The Division of Labor Standards Enforcement desires to grant a farm labor contractor's license and/or a garment manufacturing registration only to those employers who are in compliance with all applicable Federal laws including, *inter alia*, those laws which pertain to the verification of the work eligibility of employees and those which preclude the employment of aliens who are not authorized to work in this country. The Immigration and Naturalization Service is concerned about licensees and registrants who have violated Federal immigration law, have become subject to a final, unappealable order for such violation, and have then become delinquent in the payment of the fine imposed, resulting in a burden on the government to effectuate collection.

An appropriate and regular exchange of information between the signatory agencies is deemed beneficial to both, and to the interests of the public. This Memorandum of Understanding is intended to set forth a framework of mutual cooperation towards the ultimate end that labor standards obligations and the Federal immigration law obligations of DLSE licensees and registrants can be enforced more expeditiously. The exchange of appropriate information and the mutual cooperation called for by the protocol set forth below should be followed to the fullest extent feasible.

This agreement is entered into between the headquarters office of DLSE and the Western Region of the Immigration and Naturalization Service which includes the Districts of San Francisco, Los Angeles and San Diego within the State of California.

1. The Immigration and Naturalization Service, Western Region, will provide to the Division of Labor Standards Enforcement the names (complete with any known dba or aka), addresses, telephone numbers and other relevant identifying information on those businesses which are believed to be required to possess a State farm labor contractor's license or garment manufacturing registration, which have been subject to a final, unappealable order under the provisions of Sections 274a and/or 274c of the Immigration and Nationality Act (INA), as amended, provided that the time allowed by the final order to pay the fine imposed has expired and payment is now delinquent.

2. Upon receipt of the aforementioned material (and after a reasonable time is afforded to process the information), the DLSE will notify the INS (1) whether the employer falls under the jurisdiction of the California State Department of Industrial Relations, DLSE, and (2) whether the employer is currently duly licensed by the State as a farm labor contractor or garment manufacturing registrant.

3. As a condition of granting or renewing a farm labor contractor's license or garment manufacturing registration, DLSE will require the applicant to resolve, by payment in full, all outstanding fines owed under a final order pursuant to Sections 274a and/or 274c of the INA.

4. INS will provide DLSE and the employer subject to a final order with proof when the delinquent payment has been made and all such debts are satisfied.

Both INS and DLSE reserve the right, on reasonable a notice, to discontinue the terms and conditions set forth in this Memorandum of Understanding should this arrangement no longer prove to be mutually satisfactory.

Victoria L Bradshaw

GUSTAVO DE LA VINA
Regional Director
Western Region
U.S.I.N.S.

VICTORIA L. BRADSHAW
State Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
San Francisco, California

Date

4-12-95

Date

TESTIMONY

before the
ASSEMBLY SELECT COMMITTEE ON IMMIGRATION

FRANK RICCHIAZZI
ASSISTANT DIRECTOR
CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

DECEMBER 8, 1995

Good morning. My name is Frank Ricchiazzi, Assistant Director, California Department of Motor Vehicles. Thank you for the opportunity to meet with you and discuss our recent experience with establishing legal presence for driver license and id card applicants.

The DMV is the state agency charged with establishing identity of California residents. In 1979 our legislature stated that as a matter of legislative policy the driver license and identification (ID) card issued by the DMV are the basic identification documents of the State of California.

California has 24 million licensed drivers and ID card holders. We issue over 5000 original licenses and ID cards per day throughout the state, a total of 1.3 million per year. We issue ID cards to children, and to senior citizens who no longer drive. 73% of our population has either a driver license or ID card.

It is because of our role in identification that the Department is now required to verify legal presence for new applicants. The DMV implemented Senate Bill 976 (Chapter 820, Statutes of 1993) effective March 1, 1994. The department requires every applicant for an **original** driver license (DL) or identification (ID) card to submit satisfactory proof that their presence in the United States is authorized under federal law. A list of documents that serve as "satisfactory proof" of legal presence was established through regulations.

The department currently verifies documents issued by the Immigration and Naturalization Service (INS) through an electronic verification system known as the Alien Status Verification Index (ASVI), which includes the Systematic Alien Verification for Entitlement (SAVE) database. INS allowed DMV's electronic verification access to include status information for non-immigrant aliens who are legally present in the United States. INS is continuing to expand the kinds of documents available to DMV for electronic verification to

make the DMV verification process faster and more cost effective for both agencies.

DMV began electronic verification of INS documents in July 1994. Between March 1, 1994 and October 31, 1995, more than 600,000 INS documents have been submitted to DMV. Historically, 75% of the INS documents submitted to DMV are verified electronically, either on the first attempt or on a second attempt 40 days later. The remaining documents are sent to INS for secondary (manual) verification. As of October 31, 1995, approximately 1% of the documents returned from INS have been determined to be invalid, resulting in the denial of a DL or ID card.

During our 21 months of experience with legal presence, we have gained considerable experience and knowledge about immigration documents and the verification processes.

The INS is the **only** agency authorized to determine whether or not a non-citizen is legally present or authorized to work in the United States. The Department of Motor Vehicles only requires applicants for **original** driver licenses or identification cards to submit proof that they are **legally authorized** to be in the United States.

There are many categories of visitors who apply for driver licenses and identification cards who are not work authorized. To give you an idea of just how complicated it is to verify legal presence, the department accepts 18 different documents issued by INS to establish legal presence, in addition to 12 different types of documents from the remaining applicants. To further complicate matters, INS documents are continually undergoing some sort of revision, either by the addition of new documents or revisions to existing ones.

DMV accepts the INS Work Authorization Card as proof of legal presence. The Work Authorization Cards we see are usually issued for a short period of time and are often not verifiable in the electronic ASVI system. Secondary or manual verification is usually required. This is a much slower verification process, sometimes taking as long as 30 days.

A code indicating the broad type of legal presence document submitted is stored in the DMV data base. Driver licenses are currently termed for 1, 2, 3, or 4 years, depending on the validity period of the INS document submitted. However, once it is determined that an applicant is legally present in the United States, DMV does not monitor the applicant's INS status changes during their authorized stay. They may enter the country as a visitor (unauthorized to work) and later have their status changed to be work authorized.

In addition to establishing a legal presence requirement for original driver licenses and identification cards, Senate Bill 976 required DMV to print the following notice on all licenses issued on or after July 1, 1995: *This license is issued as a license to drive a motor vehicle;* ***it does not establish eligibility for employment,*** *voter registration, or public benefits.*

The best characterization of the system and how it works is contained in the two legislative reports that the Department has submitted since the law took effect. I can provide copies of those reports to you next week if they are not readily available to you.

DMV's data base contains insufficient information to determine whether or not an individual is work authorized. The legal presence law pertains only to **original** applications submitted since March 1, 1994, and therefore, legal presence status information is available for relatively few individuals on DMV's data base.

We at DMV are able to share our experiences from implementing the legal presence law and electronic verification of INS documents. Because of the limitations of our data, and it does not seem viable for us to participate in a pilot which might involve accessing our database for legal presence information on specific individuals . Our information is point-in-time only, capturing status at the time of application, and we do not feel that we are the appropriate agency to verify whether or not an individual is properly authorized to work in the United States.

Thank you for giving me the opportunity to present this testimony and clarify DMV's involvement with INS and legal presence.

psg 12/7/95:1:45

CALIFORNIA

DRIVER LICENSE CLASS: C

I7101864

EXPIRES 11-15-[illegible]7

This license is issued as a license to drive a motor vehicle; it does not establish eligibility for employment, voter registration, or public benefits.

ANNIE CARR DRIVER

2415 1ST AVE

SACRAMENTO CA 95818

SEX: F HAIR: BRN EYES: GRN

HT: 5-03 WT: 110 DOB 11-15-70

Annie Carr Driver

11/15/93 131 88/ FU[illegible]7 2004

TESTIMONY OF ROBERT C. DAVIS, PRESIDENT OF ST. JOHN KNITS, INC.

BEFORE THE CALIFORNIA STATE ASSEMBLY

SELECT COMMITTEE ON STATEWIDE IMMIGRATION IMPACT

DECEMBER 08, 1995

MY NAME IS BOB DAVIS, I AM PRESIDENT OF ST. JOHN KNITS, A MANUFACTURER OF DESIGNER CLOTHING. WE EMPLOY OVER 2,000 PEOPLE IN SOUTHERN CALIFORNIA, AND HAVE BEEN IN BUSINESS FOR 33 YEARS.

TODAY'S IMMIGRATION LAWS RELATING TO THE PROCESS OF HIRING NON-CITIZEN WORKERS CAN BE CHARACTERIZED AS SIMPLE IN FORM, AND COMPLICATED IN EXECUTION FOR BUSINESS, AND INDUSTRY. CONGRESS ENACTED A LAW WHICH SET UP RULES, PROCEDURES, AND PENALTIES TO GOVERN THE HIRING OF THIS CLASS OF WORKER. HOWEVER, FOLLOWING THESE RULES BY THE EMPLOYER DOES NOT INSURE THE HIRING OF A GIVEN INDIVIDUAL WILL, 1) RESULT IN THE HIRING OF A LEGALLY DOCUMENTED WORKER AND, 2) PROTECT THE EMPLOYER FROM INCURRING ECONOMIC LOSS. THE REASON IS OBVIOUS. THE **VALIDITY** OF DOCUMENTS PRESENTED FOR INSPECTION PRIOR TO HIRING IS UNKNOWN. FORGED DOCUMENTS ARE READILY AVAILABLE. ACCESS TO A COMPUTER AND COLOR COPIER IS ALL THAT IS NEEDED TO HELP ALIENS CIRCUMVENT THE LAW. BUSINESSES ARE NOT EQUIPPED TO EVALUATE PROFESSIONAL FORGERIES. THE LAW DOES NOT

REQUIRE US TO JUDGE THE DOCUMENTS VALIDITY. THE HIRING PROCEDURES FOR A COMPANY WITHOUT A VERIFICATION SYSTEM IS A ROLL OF THE DICE. FOR MARGINAL BUSINESSES THAT ONLY WISH TO EXPLOIT THIS LABOR FORCE, THIS RISK IS OF NO CONCERN. IT WILL ACCEPT EVEN OBVIOUS FORGERIES AND REMAIN IMMUNE FROM EMPLOYER SANCTIONS. EMPLOYEE REMOVAL IS NOT A SIGNIFICANT LOSS. TO A BUSINESS THAT WANTS TO COMPLY AND BUILD A STABLE LABOR FORCE THIS IS A MAJOR CONCERN. ECONOMIC LOSS FROM HIRING, TRAINING AND LOSS OF OUTPUT FROM THE REMOVAL OF A FORGED DOCUMENT WORKER CAN BE SEVERE.

THE ALIEN VERIFICATION SYSTEM TOTALLY ELIMINATES THIS PROBLEM. IT CREATES A WIN / WIN PARTNERSHIP BETWEEN GOVERNMENT AND BUSINESS. THE INS HAS FULL COMPLIANCE WITH THE LAW, AND THE EMPLOYER KNOWS THE NEW-HIRE IS AUTHORIZED TO WORK. THE EMPLOYER CAN NOW INVEST WITH CONFIDENCE IN THE TRAINING OF THIS INDIVIDUAL, AND PLAN FOR A LONG TERM PERMANENT WORK FORCE.

THE MARGINAL BUSINESS IS ALSO ADDRESSED UNDER THE VERIFICATION PROCESS FOR IT LOSES THEIR PROTECTIVE UMBRELLA FROM EMPLOYER SANCTIONS.

ST. JOHN STRONGLY BELIEVES IN THE VERIFICATION SYSTEM. WE HAVE SEEN

IT WORK. ST. JOHN BEGAN OUR PARTNERSHIP 74 DAYS AGO. SINCE THEN APPROXIMATELY 250 INDIVIDUALS HAVE BEEN INTERVIEWED. 194 WERE HIRED, AND OF THESE, 179 WERE VERIFIED THROUGH THE INS COMPUTERS AS AUTHORIZED TO WORK, 7 PENDING, AND 8 UNABLE TO VERIFY AND WERE SENT TO INS FOR AUTHORIZATION. AS A BUSINESSMAN THIS PROGRAM HAS BEEN VERY EXCITING AND REASSURING. WE CAN BUILD OUR BUSINESS ON A STRONG LABOR FOUNDATION BY ELIMINATING THE UNKNOWN.

THE VERIFICATION SYSTEM ALSO PROVIDES AN ADDITIONAL BENEFIT TO WORKERS. AUTHORIZED WORKERS WILL NOT BE DENIED EMPLOYMENT DUE TO EMPLOYERS JUDGEMENT AS TO DOCUMENT VALIDITY. ST. JOHN PERSONNEL RECENTLY REVIEWED A QUESTIONABLE GREEN CARD. WITHOUT THE VERIFICATION SYSTEM WE WOULD HAVE DENIED EMPLOYMENT EVEN THOUGH THE APPLICANT WAS QUALIFIED. WE SUBMITTED HIS CARD NUMBER AND HE WAS VERIFIED AS AUTHORIZED TO WORK. THE YOUNG MAN IS CURRENTLY BEING TRAINED ON OUR COMPUTERIZED KNITTING MACHINES.

ST. JOHN STRONGLY SUPPORTS THE INS VERIFICATION PROGRAM. IT HAS TO BE EXPANDED AND BECOME PART OF THE IMMIGRATION LAW. WITHOUT THIS TOOL THE LAW WILL BE INEFFECTIVE, AND WILL FAIL TO STOP UNAUTHORIZED WORKERS FROM BEING HIRED.

INS2

GT BICYCLES INC.
3100 W. Segerstrom Avenue
Santa Ana, CA 92704
(714) 513-7100

STATEMENT ON THE
TELEPHONE VERIFICATION PROCESS

Presented To

SELECT COMMITTEE ON STATEWIDE IMMIGRATION IMPACT

FRIDAY, DECEMBER 8, 1995

LOS ANGELES, CALIFORNIA

STATEMENT

At the present time GT Bicycles is in the process of bringing more of our production from overseas to the United States. Accordingly, as the company continues to grow, we will be experiencing a steady increase in our labor force. In addition, GT had been the target of an INS investigation in the past, and upon my employment as Human Resources Manager, my supervisor stressed the importance of compliance with the Immigration Reform and Control Act of 1986, as it applies to new hires. It is therefore in our best interests to have a reliable method of verification of non-citizen documentation.

Although it is possible to recognize false documentation, there has always been a question in the back of my mind that with the sophisticated methods now used to produce false documents, as evidenced by the seizure of documents in Huntington Park in October, there may have been documents that passed my scrutiny that were in fact false, placing GT Bicycles in danger of employing unauthorized non-citizens. For this reason, I am especially appreciative of the Telephone Verification System program that we have had in place since late September. Beginning with the initial training to the actual implementation and use of the system, the INS representatives have been extremely cooperative and have extended every courtesy in order to facilitate the success of our participation. The INS conducted a half-day training session, supplied the instruction manual and the program via a floppy disc. The system was programmed into my PC and immediately accessible. The program has proven to be very successful - it is "user friendly". The actual verification takes approximately 5 seconds. If I encounter any problems during the verification process that cannot be remedied on-line, I have two numbers available that were supplied by the INS that I can call for assistance.

Since coming on-line, I have processed a total of 31 new hires of non-citizens. Of those 31, 29 have been determined authorized to work, and two have been determined "unable to verify". At this point I initiated a "secondary verification" which requires additional information be submitted in order to ensure that all appropriate records can be queried by the INS to prevent the termination of employment for eligible non-citizens. Of these two, one is in process of resolution, and the other is awaiting final determination. For those employees whose documentation needs clarification of current status, the INS has established an office in Los Angeles to which employee can go to get hands-on assistance in determining their status. One employee has taken advantage of this service, and has expressed her thanks in the assistance that was given to her. It is gratifying to both the employees in question, and myself, as Human Resources Manager, that the INS is in fact cooperating with our employees to resolve documentation problems and not classifying them as ineligible outright.

Not included with the number of new hires now processed, are the 8 new hires that declined employment, based on the statement in my office that is read by each new hire, that states that GT Bicycles is a participant in the Telephone Verification System.. These new hires forthrightly admitted that their documentation was false, thereby eliminating the need to continue the hiring and verification process. This has resulted in time and effort, that would have been expended with ultimately futile results, now being utilized in more productive work.

In conclusion, the TVP program has given us peace of mind with the knowledge that GT Bicycles is complying with the laws regarding employment of non-citizens as defined by the US Department of Justice and the US Immigration and Naturalization Service. In addition, and perhaps ultimately more important, there is satisfaction in the knowledge that jobs have not been taken away from those deserving non-citizens that also abide by the law.

Virginia Valadez
Human Resources Manager
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Statement of Craig E. Gosselin
Delivered to the California
State Assembly Select Committee
on Statewide Immigration Impact
December 8, 1995

Good morning. My name is Craig Gosselin and I am Vice President and General Counsel of Vans, Inc., the manufacturer and distributor of Vans footwear, apparel and snowboard boots. In my capacity as General Counsel, I manage Vans' Human Resources Department.

Nearly three years ago we found out the hard way that we had a serious problem at Vans: we had been targeted by several sophisticated counterfeiters who had been supplying phony immigration documents to persons applying for jobs at Vans. These documents appeared, on their face, to be genuine.

As a result of the counterfeiters' actions, we were unknowingly employing several hundred undocumented aliens. The INS raided us in January of 1993 and over the next 18 months, we lost, or had to terminate, hundreds of employees.

Although we were never accused of any wrongdoing in this matter, the resultant adverse publicity, coupled with the loss of productivity that accompanies significant employee turnover, severely hurt Vans.

It is my view that the problems we experienced could have been completely avoided if the INS' telephone verification system had been in place at that time. Simply stated, TVS takes the guesswork out of immigration document processing. TVS is easy to use and, based on our experience, appears to be completely accurate. We no longer have to keep track of the vast array of immigration documents that are issued by the INS, and we no longer have the burden of scrutinizing documents to determine whether they "reasonably appear to be genuine."

I have often said that 99% of the employers in this country want to comply with the law; all they need are the tools to help them do it. TVS is the first significant compliance tool that I have seen government develop in the 11 years I have practiced law. The type of partnership that results from programs like the TVS will result in a higher legal compliance rate, more efficient government, and lower costs of doing business. Additionally, I believe that TVS will free up valuable INS enforcement resources which can be used to police the small percentage of rogue employers who flaunt the immigration laws. This, in turn, should significantly stem the flow of illegal immigration to this country.

Thank you for allowing me the opportunity to present this statement.

CALIFORNIA RESTAURANT ASSOCIATION

HEADQUARTERS OFFICE: 3435 WILSHIRE BOULEVARD • SUITE 2230 (EQUITABLE PLAZA) • LOS ANGELES, CA 90010
213-384-1200 • 800-794-4CRA • FAX: 213-384-1623

Testimony of the California Restaurant Association before the California Select Committee on Statewide Immigration Impact Friday, December 8, 1995 State Building, Los Angeles

Madam Chairwoman and Members, I am Stanley Kyker, executive vice president of the California Restaurant Association. Thank you for giving our Association the opportunity to comment on the subject of telephone verification for work authorization under the Immigration Reform and Control Act of 1986 (IRCA).

This issue of proper work authorization has a tremendous impact on California employers, in particular the restaurant industry. Clearly, changes in the present system are needed to ensure that authorized workers do not face discrimination, and that employers have reliable information upon which to make hiring decisions. Assemblymember Napolitano, we welcome your proactive approach of in addressing these needs.

background on California's restaurant industry

California's restaurant industry has annual sales of about $23 billion a year and provides $2 billion in sales tax revenues to state coffers. Our industry operates some 69,000 units in California and provides jobs for 780,000 residents of our state.

characteristics of restaurant industry labor force

The issue of immigrants in California's work force is a critical one for the foodservice industry. Estimates hold that fully half of all immigrants in the U.S. are in the Golden State.

And the restaurant industry has always been a springboard to careers for new arrivals. A front-page story in the *Los Angeles Times* only three days ago notes: "Restaurants have traditionally been a lifeline for newcomers short on English and capital."

Another factor unique to the restaurant industry is our -- lamentably -- high employee turnover rate. Students hold brief stints as restaurant workers between semesters. A hot chef is promptly lured away by the competition. A reliable dishwasher is quickly promoted to prep cook.

While we are proud of advancement opportunities and flexibility that restaurant jobs provide, we cannot deny that this turnover rate -- as high as 300 percent a year in some restaurants -- means that restaurant employers are almost constantly in a hiring mode. This means our employers have possibly the greatest liability for unintentional errors in work-authorization paperwork.

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GOVERNMENT AFFAIRS OFFICE / CHAPTER RELATIONS OFFICE: 980 NINTH STREET • SUITE 1480 • SACRAMENTO, CA 95814 • 916-447-5793 • 800-765-4842 • FAX: 916-447-6182

the role of CRA in educating industry on IRCA requirements

Recognizing the unique characteristics of the restaurant industry in regard to work authorization, the California Restaurant Association has from the outset of IRCA trained its members and the industry in compliance. Although we routinely protest new proposals to further regulate our business, we do our utmost to ensure compliance with the laws that govern our industry.

Our publications regularly remind members of their IRCA responsibilities. We have staged free seminars on completing I-9 forms at our trade shows. And we have mailed out literally hundreds of *Special Reports* explaining the work-authorization process step-by-step. Of the more than 50 titles in our series of *Special Reports*, our issue on completing I-9 forms is one of the most popular.

the need for effective verification

Despite all the efforts that CRA makes to ensure that restaurant employers understand their obligations under IRCA, we know that they are in an almost impossible situation.

On one hand, they are under siege from document counterfeiters. Los Angeles is considered by many to be the counterfeit-document capital of the U.S. Only a few blocks from where we are today, any car that slows down might be solicited to buy fake driver's licenses and Social Security cards. Because so many different documents are acceptable for I-9 forms, employers are required to authenticate documents they have never laid eyes on before.

The unauthorized workers are only part of the problem. California employers also have the challenge of staying current with the swiftly changing status of "authorized" workers.

For example, Salvadoran nationals here under the Deferred Enforced Departure program have had their work authorization extended twice, from December 1994 to September 1995 to January 1996. The work-authorization document for these individuals -- I-688B -- bears the December 1994 expiration date. Yet employers who are not CRA members have had little chance to learn of the two extensions, and run the risk of federal prosecution if they fail to hire these individuals.

The Salvadoran amnesty confusion is a small issue compared with the impending phase-out of the I-151 alien registration card, or "green card." Needless to say, we are talking about thousands and thousands of aliens in California who will be affected by this program. And again, this program has been postponed by the Immigration and Naturalization Service three times already -- to March 20, 1995. We fully expect another round of confusion, delays, and controversy as the supposed "deadline" draws near.

Compounding the problem is that the work-authorization process goes beyond the INS and also involves the Social Security Administration. Even though babies only three months old will need a Social Security number to be claimed as a deduction in 1995, the SSA is notoriously poor at verifying Social Security numbers for employers with questions. (However, SSA is quick to impose fines on employers who report wages under incorrect numbers.) Our conversations with SSA personnel show little understanding of the INS work-authorization requirements. Clearly, these federal agencies must begin working in concert on this vital issue.

Where does all this leave the restaurant employer? The answer is simple: between a rock and a hard place. The employer wants and needs eager workers. And the workers are there. But the employer is legitimately frightened. The $400,000 in fines levied against a major southern California theme park a few years ago for inadequate work-authorization records has made a lasting impression on employers here. They risk charges of discrimination for the people they don't hire, and charges of improper documentation for the people they do hire.

what is needed

Some means of verifying government documents is vital to the integrity of our employment system. We do not advocate any particular authorization card or system. We desperately need a reliable, convenient means for employers to verify the authenticity of the documents that the government itself requires. The present system -- which puts the onus on the employer for the government's failure to keep its own records up to date -- is unacceptable.

I can assure you that the restaurant industry will participate eagerly in such a program. Our publications have often described the fledgling pilot verification program, bringing offers of ready volunteers into our offices.

We fully support any moves to improve the document-verification process and stand ready to offer our comment and assistance.

I will be happy to answer any questions you may have.

###

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*** Honorary Director, National Restaurant Association*

†Past President, National Restaurant Association

Communications Workers of America
Local 9400 AFL-CIO, CLC

Statement of Alex Rooker, re; AB507
Director CWA Local 9400, AFL-CIO,CLC

Honorable members of the California State Assembly, my name is Alex Rooker, I reside at 1227 S. Dale Avenue, Anaheim, CA 92804

I thank you for giving me the opportunity to address your committee today as the issue at hand is very near and dear to the Communications Workers of America and the members we are privileged to represent.

First of all, I am aware of the suggested pilot program which would be enacted into statute with the passage of AB507. I am also aware that if passed, this proposed legislation would have to be in full federal compliance.

I am here today to speak against AB507 as proposed. We are also aware of the Simpson-Mazolli bill which has become the law of the land. Simpson-Mazolli was enacted to provide for employer sanctions. We are at the state level of government and anything provided for from this body would have to be in full compliance with the Federal Government.

Often times when our nation is not able to provide needed services due to the ineptness of our Federal and State legislative bodies losing our tax base which provides needed services, the first source of frustration is taken out on those who are without a voice.

We witnessed this first hand with the Proposition 187 mania which swept across our great state like the plague it was intended to be. Proposition 187 addressed areas which did not belong at the state level, but should have been placed at the door steps of our Nations House of Representatives and U.S. Senate. The truth in this statement is borne out with the recent federal courts ruling on the legality of proposition 187. Those of us who were able to keep our wits and rationalize spoke out and voiced logic and truth.

Now today we are looking at the son of 187 with this hearing. With the passage of this type of legislation, we are further compounding an issue which does not belong at the state level. Even if this proposed legislation were to be found legal by federal statute which I feel positive it would not, would be another area to subscribe to racist policies.

I know this statement could be considered radical, but it is in fact what will happen based on the following. Telephone verification would indeed take place when an employer is suspicious of the applicant. Do you foresee Mary Blue Eyes with blonde hair becoming an object of suspicion, or do you foresee Mr. Pedro Gonzalez, brown skinned with accent becoming suspicious. Who do you think will promote the telephone call. We witnessed this with the pre-passage of proposition 187.

Certainly not all employers will subscribe to this type of a policy, but if it happens even once, that is once too often.

Again let us address where we should be heading instead of attempting to blame others for our mistakes. I firmly and sincerely believe we have lost our tax base in this great state. We should be addressing legislation which would make California a more business friendly state. We have witnessed employer greed by first fleeing to the sunbelt states where a Union Shop is not legal and the minimum wage is the law of the land. That was not enough for greedy employers, they have now taken to moving California jobs offshore and have opted to exploit third world countries for their cheap labor. While doing so, they are not subject to environmental rules as they would be here in the United States.

Everyone believes Labor was being greedy when we opposed NAFTA. We did not oppose NAFTA, we opposed "that" NAFTA because it was on the fast track and there were too many loopholes which should have been addressed and amended. We believe in "fair" trade which means a balance of trade agreement. We believe safety on our nations highways should not be tampered with because a panel of attorneys will allow trucks to come into California with near unlimited weight restrictions and no law calling for front wheel brakes in addition to the rear axles.

These are things which cut to the heart and soul of the American Labor movement. With the passage of AB507 we are further compounding a problem which does not really exist to any great proportion. Certainly we have the undocumented with us today. How do you define who is suspicious? and who will prompt the telephone call?

What remedy does this legislation provide when the employer causes an employee to suffer undue hardship. Certainly you ask the employees permission to place this telephone call, and when the employee refuses to grant permission, he or she immediately places themselves "at risk" and are also the number one target for suspicion to cast upon them.

Additionally, I firmly believe the funding for this pilot project would be better served by enforcing current and existing laws already on the books. We as a nation and great state should take the high ground and seek better avenues other than AB507.

Honorable members of this committee, I thank you for giving me this brief opportunity to testify.

Alex Rooker

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TESTIMONY BEFORE THE COMMITTEE ON STATEWIDE IMMIGRATION IMPACT

December 8, 1995

HEARING ON TELEPHONE VERIFICATION SYSTEM AND CALIFORNIA STATE ASSEMBLY BILL AB507

December 8, 1995

Testimony of Cristina Vazquez - Political and Education Director of Union of Neddletrades Industrial and Textile Employees, AFL-CIO- UNITE, on the subject of Telephone Verification Legislation AB507.

Before:

Assemblywoman Grace Napolitano

Members of California State Assembly Select Committee on Statewide Immigration Impact

THE THREAT OF A.B.507 (g) (1) TO OUR CIVIL FREEDOMS

The proposal contained in A.B. 507 (g)(1) to mandate the Attorney General to negotiate and execute a memorandum of understanding whereby a computer network to link the data banks of the I.& N.S., Social Security Administration, the Division of Labor Enforcement Standards, Department of Motor Vehicles, and the Franchise Tax Board represents one of the greatest threats ever posed to the privacy rights of the people of California. The entities whose files are to be linked have control over vast amounts of personal and private information about virtually every single adult in the country. To create this kind of data-sharing network about the American people, in light of the ease with which computer hackers and other individuals routinely get access to even the most "secure" data banks, is sheer irresponsibility and it represents a total departure from the goal to get big government off the backs of the People and out of their lives.

THE BILL IS ANTI-LATINO BECAUSE ITS IMPLEMENTATION WILL FOCUS ON LATINO AREAS AND LATINO PEOPLE AS "THE ILLEGALS"

All recent immigration-related legislation has tended to either start from premises that are anti-Latino, or contain provisions and implementation procedures that are clearly anti-Latino. This Bill contains no provision to ensure that the "volunteer" employers are evenly distributed throughout the State, so that all racial and ethnic groups in the state are equally affected of benefited, as the case may be. However, given the track record of the government agencies involved, it is a virtual certainty that the target population of undocumented workers will continue to be equated with people of Mexican and Latino ancestry.

This project contained in this bill will be centered in the areas of greeters Latino concentration in the State, and within those areas it will focus on the industries most dependent upon Latino workers. This focus is discriminatory because it is based upon racial and ethnic stereotypes and false premises.

CONCLUSION

THIS BILL WILL NEVER BE ACCEPTABLE TO THE LABOR MOVEMENT BECAUSE OF OUR LENGTHY EXPERIENCE WITH PRIOR LEGISLATION AND ENFORCEMENT PRACTICES, WHICH HAVE SHOWN US THAT ANY LAW THAT CRIMINALIZES AN EMPLOYER-EMPLOYEE RELATIONSHIP ALWAYS BECOMES A POWERFUL TOOL FOR THE EMPLOYERS' BLACKMAIL OF THEIR EMPLOYEES.

Statement in Support of AB 507
Ira Mehlman, California Media Director
Federation for American Immigration Reform (FAIR)
Los Angeles, December 8, 1995

Madam Chairwoman, on behalf of FAIR I want to thank you very much for the opportunity to testify beore the Select Committee on Statewide Immigration Impact in regard to the adoption of a nationwide telephone employment verification system and your bill, AB 507. The dual objectives of this hearing — encouraging the federal government to live up to the committment it made to the American people nine years ago and instituting our own pilot program here in California — are to be commended. We hope that what we do here in the state most adversely affected by illegal immigration, will help move the federal governmet toward a comprehensive solution to this lingering problem.

FAIR has long believed that the cornerstone to controlling illegal immigration to the United States is the enforcement of employer sanctions. Jobs, after all, are the primary magnet that draws large number of illegal aliens to this country. Only by drastically reducing the possibility of finding employment in the United States, will we be able to dissuade illegal aliens from attempting to settle here. Making employer santions work, demands that we institute a quick and secure method of verifying each individual's eligibility to hold a job in the U.S.

Americans have a vision of themselves as a nation of rugged individualists. It is perhaps a remnant of our frontier days, during which we opened up a continent by our individual determination and hard work.

Of course, as we all know, our frontier days are long behind us and a century's time and several generations have romanticized our images of that period of our history. Nevertheless, we like to cling to certain illusions about who we are and how we live as we near the 21st century. We have constructed for ourselves a complex and elaborate social safety net run by the government, yet our vision of ourselves is one of the self-sufficient pioneer pushing back the frontier.

The America we actually live in is much different. In reality, we are an urban nation of middle class workers, with grave concerns about whether our well-paying jobs and comfortable lifestyles will still be here tomorrow. We bristle at big government, but we punish any political leader who even suggests cutting a government program that benefits us. And since every program benefits one of us, it is very rare, despite the rhetoric, when we wind up with less government, rather than more.

It is fair to say that the American Dream today is a well-paying job for every American who is able and willing to work, and a generous and compassionate social safety net for those who, through no fault of their own, cannot make it on their own. From Bill Clinton to Newt Gingrich, from Jesse Helms to Jesse Jackson, few people would argue with that vision of what America cught to be.

If that is what we want as a nation, then we must be mature enough to recognize what is required to make it a reality. It is certainly true that anything worth having is worth protecting. If what is worth having is a high wage economy and a generous social safety net, then protection means limiting access. If our labor market is accessible to anyone who can make his or her way into this country, then the immutable laws of supply and demand will inevitably erode wages and working conditions. If our social welfare system is asked to provide for more and more people who come here from other countries, it will either collapse under its own weight or result in a taxpayer revolt.

The choice is a simple one: limit access or lose what we hold dear. It is no mystery where the American public comes down on these issues. They want access restricted to our domestic labor market and to our public services. The question then becomes, How do we control access is a manner that is effective, as non-obtrusive as possible and which does not lead to discrimination? AB 507 is a good, and long overdue, first step in the direction of a universal system that will ensure that our jobs, tax dollars and privacy are protected.

FAIR has long supported a nationwide secure verification system for employment and benefit eligibility that would apply to every person in this country, regardless of immigration status. Instituting such a system nationally is, of course, beyond the ability of the California legislature. But, as is often the case, California can lead the nation by what we do here. Even a modest pilot program in the nation's largest state, properly run, can demonstrate to the rest of the country that it is possible to protect jobs, benefits and civil liberties.

The long-term solution, however, must be a universal verification system that is tied into the Social Security data base. Whether we care to admit it or not, the Social Security number (if not the card itself) is the universal identifier in this country. Every person over the age of two, legally residing in the United States, must have a valid Social Security number. The data base already exists and adopting a verification system based on the Social Security number will not require anyone to acquire any new identification documents. What is needed, is a means to cross check the data in the Social Security Administration's computer base with the vital data of a job or public assistance applicant.

The Social Security Administration has long resisted efforts to have its data base used in this manner. AB 507 may finally prove to be the crow bar that pries open access to the one universal data base that exists in this country. As the most important political state in the nation, actions taken in the California Assembly cannot be ignored even by the most intransigent bureaucrat along the Potomac.

Anyone who has surfed the Internet knows that even the largest and most complex repositories of information around the world are now readily available on-line. There is simply no technological reason why a secure system that allows the verification of limited information in the Social Security Administration's computer files cannot be made readily accessible to the nation's employers. We can, as AB 507 suggests, balance the need to verify an individual's eligibility to work and collect benefits in this country, with our strong desire to protect people's privacy. Protecting privacy should not mean that we rely on the honor system as the sole obstacle to illegal

aliens entering our labor market.

While FAIR applauds AB 507's requirement that "green card" information be cross-referenced with the Immigration and Naturalization Service's data base, we believe that use of the Social Security Administration's data base will be more effective. If the only documents that are verified are INS-issued ones, then many will attempt to circumvent the verification process by making false claims of citizenship.

We also hope that, as quickly as is possible, California will expand the pilot program initiated by AB 507 into a statewide one similar to the verification procedures now being effectively implemented by the Department of Motor Vehicles. Several years ago, the DMV undertook an effort to check the residency status of every individual who applies for a California driver's license. This procedure has been an enormously powerful deterrent to illegal aliens applying for and receiving this important piece of state-issued identification. Over the course of time, the DMV program will ultimately purge the driver's license rolls of people who have no legal right to live in California or anywhere in the United States.

The success of the DMV effort has demonstrated that when we make a serious effort to protect our vital documents, we can accomplish it and do it with a minimum of bureaucratic foul-ups. The mere knowledge that the DMV is going to check an applicant's legal status in the United States before issuing a license has deterred countless illegal aliens from even applying for one. Contrary to the dire predictions of those who opposed implementing a verification procedure at the DMV, the system, because it is universal, works efficiently and ensures that every person applying for a driver's license in California — regardless of appearance, race or ethnicity — is treated in exactly the same manner.

In fact, the principles that the DMV and AB 507 use to combat fraud, have been in use for many years and on a much larger scale by private industry. Scarcely a week goes by when every single one of us does not undergo some sort of instant verification procedure. Our wallets are bulging with electronically verifiable cards that allow us to make purchase without cash, pay for gas right at the pump, or get cash anywhere on the planet. In exchange for the modern conveniences that, by our behavior, we have demonstrated are important to us, we have developed an infrastructure that is highly effective at combating fraud. Instant credit and cash are important to us and we have put technology to work to protect these priorities. If we similarly value high wages (by world standards) and enlightened social programs, then we must be prepared to adapt technology to protect them as well.

The reason we have all come to accept the verification procedures that are a part of our daily lives is that they are universal and consensual. A merchant or an ATM machine runs the same electronic check on every single one of us. It makes no difference what our race or ethnicity might be; whether we speak with a foreign accent is entirely inconsequential. When we get to the cash register or the cash machine, the validity of our identification documents are checked.

Ultimately, the way to protect our public institutions — our labor market and social services — is

to apply the same secure verification process to them as well. Not more than a few thousand people apply for a new job or a public benefit on any given day in the United States. If Visa and Mastercard and American Express and Exxon and Sears and Bank of America and countless other issuers of plastic can collectively run hundreds of millions of verification checks every single day, then the only real impediment to instituting a similar procedure for employment and benefits, is bureaucratic inertia.

AB 507 is a small first step down this road. Importantly, the bill includes back-up procedures to ensure that computer error or bureaucratic foul-up does not result in someone being denied a job that he or she is legally entitled to hold. AB 507 provides several layers of protection to ensure that a job applicant who is erroneously ruled ineligible for employment, can correct the mistake. If the system is managed properly, incorrect verifications will be few and far between, just as mistakes in credit card and ATM card verifications are rarely made. But on those rare occasions when a mistake might occur in the employment verification procedure, AB 507 provides for an expedited method of correcting the problem before it costs somebody his or her job.

We have often been told by the naysayers that a system that requires someone to be verified for employment or benefit eligibility will lead to discrimination. That is why FAIR has always urged the adoption of a universal verification procedure, based on a universal document. There are safeguards that can be built into any system to ensure that inadvertent discrimination will not occur. (Deliberate discrimination, will not be affected one way or the other by an employment verification procedure; only vigorous enforcement of civil rights laws will stop that abhorrent practice.) But we must weigh any concerns about small potential for unintended discrimination against the reality that many citizens and lawful immigrants are being discriminated against by employers who prefer to hire illegal aliens — people with limited recourse to stand up to unfair wages and dangerous working conditions.

There is no longer a question about whether we need to adopt a method in this country to distinguish between those people who are legally allowed to live, work and collect benefits here and those who are not. There is almost universal agreement that it must be done. The question before us is how to do it effectively and fairly. AB 507 is small-scale prototype of what needs to be done nationally. California must once again show the way and this bill will start us on that path.

AB 507 is not a substitute for federal action to protect American jobs and American benefits, but rather a limited measure to compensate for Washington's failures in this area. In an age when many American jobs are being shipped abroad and budget constraints are causing social programs to be slashed to the bone, there can be no excuse for not doing more to protect American workers and American taxpayers.

We, therefore, support this effort by Assemblywoman Napolitano to place California in the vanguard of a national effort to protect citizens and legal immigrants from unfair competition from people who are illegally in the United States.

TESTIMONY ON ASSEMBLY BILL 507

by

Ric Oberlink, Executive Director

Californians for Population Stabilization

Assembly Select Committee on Statewide Immigration Impact

8 December 1995

INTRODUCTION

California's Population Growth

Californians for Population Stabilization's (CAPS) primary concern is the impact of immigration upon the environment. Immigration — both legal and illegal — causes most of the population growth in California and this growth is the most serious environmental threat in the state. In 1940 California's population was 7 million; it is now over 32 million. In 1940 California had about 5 percent of the U.S. population. In 1990 it had 12 percent.

During the 80's California's population *grew* by more people than there *were* in the state in 1940. Each year California's population grows by several hundred thousand. In many recent years, California's growth rate has been higher than that of India. A recession-induced outmigration of Californians to other state has temporarily slowed our population growth, not stopped it.

In 1993 the Department of Finance for the first time made population projections for 50 years. It showed the state's population doubling by the year 2040. It could be even worse. The state has been notoriously low in past projections. Leon Bouvier, a noted demographer at Tulane University and former Vice President of the Population Reference Bureau, wrote a book entitled *Fifty Million Californians?* He made a series of projections — low, medium and high. The Department of Finance figures are lower than Bouvier's medium-level projections. In fact, Bouvier thought the most likely scenario was somewhere between his medium projection of 75 million and high projection of 90 million by 2040.

Quite simply, there is a population component to virtually every environmental problem. More people mean less wildlife, decreased open space, and increased pressure on water supplies and other physical resources. Beyond that, an increase in population means a decrease in quality of life for Californians. Traffic gridlock yields wasted time and increased frustration. Crowded parks yield decreased enjoyment.

Education, in particular, has suffered severely from population growth, especially that of immigration. California already has the largest class sizes in the nation and is 41st in per-pupil expenditures at the K-12 level. To keep pace with the immigration-driven population growth means that California must build a new classroom almost every hour. Illegal immigrants are more likely to be poor and more likely to have large families. Thus, they contribute less to the state coffers and demand more in services. State expenditures on K-12 education consume 40 percent of the state budget.

Already the state is having difficulty maintaining its existing infrastructure, let alone building the new infrastructure dictated by continued population growth. A number of economic analyses show that illegal immigration places a great strain on state services.

THE ISSUE

California is the destination of half of the estimated 300,000 illegal aliens that pour into the U.S. every year, making it home to 2.1 million illegal aliens. That is 2.1 million more people competing for jobs, housing, medical care, education and dwindling open space. CAPS has supported a number of measures which have been introduced, and sometimes passed, at the state and federal level dealing with this source of population growth. There has been, on occasions, an unfortunate debate as to whether the appropriate approach is to increase border enforcement, to eliminate the attraction of jobs, or to restrict benefits. CAPS believes we should do all of the above. One innovative approach being discussed today is a secure verification system for employment eligibility.

Federal Verification Efforts

The federal government is taking steps to address the concerns of employers regarding verifying employment eligibility of newly hired employees. The Systematic Alien Verification for Entitlement (SAVE) program, a requirement under the Immigration Reform and Control Act of 1986, requires six federal benefits programs to use the system to verify the legal alien status of those claiming to be legal aliens. Another effort is the Immigration and Naturalization Service (INS) Verification Information System Pilot Program. You will have heard from the INS today on the level of success they have had with the program and plans for future expansion. There are also several efforts in Congress to secure, improve, and expand the system. H.R. 2202 (Smith, R-TX), the Immigration in the National Interest Act, is an example of one bill moving quickly through the legislative process.

Additionally, the U.S. Commission on Immigration Reform, headed by former Congresswoman Barbara Jordan, would take the current INS pilot project one step further. The commission has recommended instituting a National Worker Registry which would use both the Social Security Administration and the INS' databases to check *all* newly hired employees, aliens and citizens alike.

It is safe to say that the federal government is making some progress in dealing with the detrimental effects of almost a decade of neglect in enforcing federal immigration laws. Increased funding of the Border Patrol, and the above verification programs are a couple of examples. But are these efforts enough? Is there sufficient progress such that California should sit back and idly wait for H.R. 2202 to pass, or the current INS pilot project to expand?

State Verification Efforts

CAPS believes that the negative effects of illegal immigration on California are so severe that these questions must be answered with a "No." Steps can and should be taken at the state level. This will (1) help reduce illegal immigration by reducing the available jobs that provide attraction for illegal entry, (2) protect the jobs of American citizens and legal aliens, and (3) address the concerns of employers over

the burdens of complying with existing federal requirements on verifying eligibility for employment.

AB 507 is a pilot project designed to assist employers in confirming an alien employee's authorization to work. Using a "point-of-sale" device, the TVS system electronically verifies the eligibility of newly hired employees. It does not check the validity of an employee claiming to be a U.S. citizen. This measure, however, has the potential of demonstrating an appropriate and needed expansion of verification programs. By using the combination of databases outlined in the bill — those from the Social Security Administration, Department of Motor Vehicles, Franchise Tax Board and INS — an employer can verify the eligibility of *all* newly hired employees. This would ease the burden of employers having to verify the birth certificate (one of the easiest forms of identification to fraudulently duplicate) of those who claim to be citizens as well as the green cards of those who claim to be legal aliens.

The use of these additional databases, as opposed to the INS' use of just one, is important for several reasons. First, it is important to establish that the state will use resources available to it to deal with a serious problem. Californians have clearly expressed, through numerous surveys and in their vote on Proposition 187, that they want something done to stop illegal immigration. There is valuable information in other databases and access to it would be a useful tool in efforts to stem illegal immigration. Second, verifying all newly hired employees could prove to be a vast improvement over the federal system. It would make it virtually impossible to discriminate on the basis of one's appearance since everyone would be be checked for eligibility for employment.

Finally, the Social Security Administration (SSA), has been hesitant to give other agencies access to its database. If California, the largest state in the nation in terms of size and political clout, takes the initiative to gain access to the SSA database, appropriate pressure might be placed on the SSA to comply with requests for assistance in stopping illegal immigration.

AB 507 assures that, as the Administration moves ahead with the Verification Information System pilot project, concerns of California's employers, employees and policy-makers are addressed.

The question remains: is California capable of implementing a state verification program? I would suggest that California may be better able to deal with such a program than even the federal government. California has, in the past, produced many innovations concerning identification systems, including the current California driver's license, which was the first in the country to use a magnetic strip. The Attorney General's office administers another identification system called CAL ID, which is a comprehensive state system for identifying criminals. With this technology and experience, California was able to implement a law which bars issuance of driver's licenses to illegal aliens.

The California state government has professional, well- trained civil servants. The state Department of Finance alone has an excellent research department dedicated strictly to immigration issues. California is probably better equipped to work with the databases and efficiently run the program outlined in AB 507 than any other state or the federal government. Certainly it is an appropriate place to initiate a pilot program.

Room for Improvement

While CAPS is very supportive of the proposals made in AB 507 we would, however, like to make some suggestions in terms of improving the bill's effectiveness. First, advancements have been made in the INS verification program since AB 507 was originally written. The INS has eliminated the necessity of telephone calls and now uses an electronic verification procedure.

An employer types in the appropriate information on the computer and, via modem, transmits the information to the INS where an answer returns almost instantly. I would recommend updating AB 507 to either reflect the progress made in the INS system or allow use of some combination of the procedures.

Second, a hole in the INS system still exists, one which I would recommend the state not mirror. When an employee claims to be a citizen and presents the apparently appropriate documentation, there is no way for the employer to know if the documents are valid. The current INS system is not only ill-equipped to verify these documents, but it is also against agency guidelines to attempt the verification. While the language in AB 507 is unclear as to whom will be checked — "all employees," "all newly hired employees" or "an alien employee" — the number of databases outlined and the breadth of information contained in them allows the state program to be extended to verify employment of all newly hired employees.

Finally, the verification process needs to be clearly outlined. Section 1(e)(8) mentions the employer cannot terminate an employee when the system indicates a secondary authorization is needed. It does not indicate what the query process is for the second authorization, nor is it clear if there even is one. The current INS program, for example, has a 3-tiered process. I would recommend using this process or some variation thereof.

THE KEY IS COOPERATION

The bottom line in reasons why a state program should be implemented is the need for cooperation. The state must demonstrate it is willing, ready and able to cooperate with the federal government in enforcing our immigration laws. The federal government cannot combat this problem without state cooperation and assistance. It is to California's benefit to do what we can to cement this cooperation. AB 507, a state alien verification program, is one form of cooperation.

Other measures introduced last session which would reinforce this notion of cooperation include:

- AB 693 (Napolitano) Would authorize the Labor Commissioner to directly bring penalties against persons who have engaged or propose to engage in defined unfair competition where unfair competition involves violation of Labor Code provisions.

- AJR 17 (Napolitano) Would memorialize the INS to take actions leading toward the execution of a memorandum of understanding with the Labor Commissioner. The purpose is to exchange information with the goal of identifying employers who hire illegal aliens.

- SB 173 (Alquist) Would impose monetary penalty on employers who fail to withhold taxes from the wages of illegal aliens.

- SB 362 (Kopp) Would prohibit an authority from expending public funds or permitting the expenditure of public funds by any of its contractors to provide housing to an illegal alien.

- SB 608 (Leonard) Would require each office within the Department of Industrial Relations to immediately notify the INS whenever it knows or has reason to believe that a person who is an illegal alien is employed or is being hired.

- SB 1113 (Russell) Would state the intent of the legislature to establish a mechanism for a cooperative efforts of the Department of Social Services, county welfare, EDD and INS to provide employment to persons receiving public assistance by filling jobs vacated by illegal aliens.

CONCLUSION

Illegal immigration is a serious problem for the United States and especially for California. The citizens have repeatedly declared that they want it stopped. While immigration is primarily a federal issue and the federal government should take responsibility for controlling the borders, California has the ability and opportunity to restrict access to jobs for those who are here illegally. AB 507, especially if changed along the lines suggested above, is an appropriate and effective initiative by the state of California to stem this serious problem.

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Testimony Before the

Assembly Select Committee on Statewide Immigration Impact

"The Federal Government's Telephone Verification System and

California State Assembly Bill 507"

December 8, 1995

Los Angeles, California

Presented By

Thomas A. Saenz

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My name is Thomas A. Saenz, and I am a staff attorney in the Los Angeles regional office of the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national organization that has worked for over a quarter of a century to protect and promote the civil rights of Latinos in the United States. Today, I speak in opposition to Assembly Bill 507.

In recent years, the state of California has been beset by two unfortunate phenomena: first, a sluggish economy whose recovery has, until quite recently, appeared to lag significantly behind the rest of the country; second, and perhaps catalyzed by the economic anxieties created by our slow economic recovery, an exaggerated and unwarranted rise in anti-immigrant furor that threatens to irrevocably divide our populace on the cusp of the twenty-first century. Expanded participation by California employers in the ill-advised TVS (telephone verification system) pilot, as proposed by AB 507, threatens to exacerbate both of these phenomena.

The TVS pilot would impose a significant administrative burden upon well-meaning California businesses while increasing some employers' incentives to engage in the type of xenophobic discrimination encouraged by our continuing wave of anti-immigrant hysteria. At the same time, the TVS pilot would do nothing to address the serious problem of employers who exploit undocumented workers, gaining an unfair competitive advantage by violating well-established but insufficiently enforced labor laws. Expansion of the TVS pilot would simply not benefit the state of California.

Much neglected in many policymakers' rush to anoint TVS and similar proposals as a quick fix for some very complicated issues are the costs that TVS would impose upon businesses that are already attempting in good faith to comply with laws governing the employment of immigrants. Employers' costs for each TVS inquiry in the first pilot of the system pilot averaged over ten dollars.[1] Because the TVS pilot is not a substitute for, but an addition to, existing I-9 procedures, these are administrative costs added to those already absorbed by employers in complying with I-9 requirements. Moreover, costs will be even higher in subsequent TVS pilots when equipment costs ($775 for each point-of-sale device and printer) and per-inquiry charges, which were subsidized in the first pilot, are imposed full-force upon employers.[2]

Most importantly, employers would have to employ and pay some number of new hires during a potentially lengthy "secondary verification" process, who will then be determined "unauthorized for employment." In the first TVS pilot, 28 percent of TVS inquiries required secondary verification and 43 percent of those secondary verifications came back unemployable.[3] This means that about twelve percent of the time employers were rewarded for participating in the pilot and accessing TVS by having to fire

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1 This figure is derived from INS, Telephone Verification System (TVS) Pilot: Report on the Demonstration Pilot -- Phase I ("TVS Pilot Report") at 17-18 (query numbers and employer cost figures).

2 See TVS Pilot Report at 17-18 (equipment and per-query costs).

3 TVS Pilot Report at 11, 12.

employees whom they had trained and oriented to their work, and whom they could have retained absent TVS. Even if some number of these are actually unemployable (and that is far from clear given the state of INS databases and records),[4] these administrative, training and other costs are a high price to impose on businesses struggling to help California's economy to recover.

Moreover, unfortunately, we know that some employers will react to these significant TVS-related costs by concluding that their cost-benefit calculus favors screening out certain job applicants. Some such employers might choose to eliminate all non-citizens from consideration because their hiring would require accessing TVS. (The TVS system only verifies status of non-citizen new hires.) While avoiding virtually all TVS costs, these employers would unfairly discriminate against California's many lawful immigrants, who have made and continue to make an important contribution to the state's economic and cultural growth.

Other employers might seek merely to screen out those who require "secondary verification" in the TVS pilot. This too would harm many, many immigrants who have the lawful right to live and work in our country. Indeed, in the first TVS pilot, 53 percent of secondary verifications resulted in an INS determination that the immigrant at issue was legally eligible and entitled to be

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[4] See National Council of La Raza, Racing Toward "Big Brother": Computer Verification, National ID Cards, and Immigration Control (July 1995) at 28-39 (discussing INS data and problems with verification systems dependent upon it).

employed.[5] Finally, some employers may choose an even more crude means of avoiding TVS-related costs -- refusing to hire anyone whose name, accent, skin color, or appearance suggests that he or she might be an immigrant. This last form of employer discrimination would inflict serious harm not merely upon lawful immigrants, but also upon many native-born and naturalized citizens who happen to meet the prevailing stereotype of "the immigrant."

Of course, all such discriminatory screening procedures are now and would remain illegal; however, we know from experience that far less significant administrative burdens have led large numbers of employers to adopt similarly discriminatory hiring policies. Under the 1986 Immigration Reform and Control Act (IRCA), the federal General Accounting Office found that nineteen percent of employers adopted policies of national origin or citizenship discrimination as a result of the implementation of the I-9 procedures and employer sanctions.[6] This increase in unlawful discriminatory practices occurred despite IRCA's incorporation of far more aggressive education and enforcement of anti-discrimination laws than are contemplated under TVS.

In addition, we can reasonably expect that this documented phenomenon of employer discrimination in the face of programs similar to TVS would be even more serious in 1995 California. The current political atmosphere, in the aftermath of Proposition 187

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[5] TVS Pilot Report at 12.

[6] See General Accounting Office, Immigration Reform: Employer Sanctions and the Question of Discrimination (March 1990) at 38-39.

and the shamefully xenophobic and anti-Mexican campaign waged by some in its favor, seems to encourage anti-immigrant discrimination. The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) recently released a report documenting the rise in anti-Latino discrimination by private individuals and businesses following last year's election, despite the fact that Proposition 187 had nothing whatsoever to do with private, non-government activity.[7] California society is simply too ripe for anti-immigrant conflagration to introduce a discrimination-inducing spark like TVS.

Increased costs to businesses in a still-recovering economy and increases in unjust discrimination are just too high a price to pay, particularly for a program that does not reach the real problem employers -- those who consciously hire undocumented workers because they can exploit their precarious legal status to subject them to illegal wages, hours, and working conditions. Perhaps because the TVS pilot entirely fails to reach or affect these employers, the first pilot showed a relatively low rate of identified ineligible workers even though employers in the pilot were strategically chosen to increase that rate.[8]

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[7] See generally CHIRLA, Hate Unleashed: Los Angeles in the Aftermath of 187 (November 1995).

[8] Only nine percent of immigrants verified through TVS were found unemployable. TVS Pilot Report at 13. When citizens, who are not verified through TVS and who comprise the majority of the workforce, are included, the figure is much lower.

These rogue businesses, who gain an unfair advantage over their counterparts -- the vast majority of California businesses -- that comply with labor laws, would not be deterred in their practices by TVS. Thus, ironically, TVS, by imposing an additional burden on businesses trying in good faith to comply with all employment laws, would increase the unfair competitive advantage of the problem employers.

If the Legislature is really interested in addressing the issue of employment of undocumented workers, it should seek to deter these very problem employers who violate labor standards in the areas of wages, hours, and workplace safety, and do so by exploiting the undocumented. Aggressively enforcing existing laws against such exploitation would help California's economy by eliminating the competitive distortion created by rogue employers, would significantly reduce these employers' incentive to hire undocumented workers, and would accomplish these goals without inviting an increase in anti-immigrant and anti-Latino discrimination or imposing a greater burden on well-meaning employers. That approach is far more productive for the nation, and most particularly, for California, as it adjusts economically and socially for the next century.

CAIB

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(909) 360-1190

CALIFORNIA ASSOCIATION OF INDEPENDENT BUSINESS, Inc.

December 7, 1995

The Honorable Grace Napolitano
California State Assembly Member
State Capitol, Room 6011
Sacramento, CA 95814

RE: **AB 507-SUPPORT**
Hearing date: December 8, 1995

Dear Assembly Member Napolitano,

CAIB strongly supports AB 507 which would supplement the INS form I-9 with a simple Telephone Verification System for validating legal employment status.

To determine the difficulty in complying with the I-9 Form requirement, Kim Conley, Director of Legislative Affairs for *CAIB*, personally tried to obtain a copy of the form. First, Kim went to the local EDD and IRS offices, neither of which had the I-9 Form. She then was sent to the local INS office. She asked the desk clerk for a copy of the I-9 Form. He said he was not aware of any such form. Kim explained what the form was used for and the clerk was still unable to produce the form. Kim showed him a copy of the form and then he told her that he would have to check with the head office and mail it to her. Kim also asked the clerk for a copy of the Handbook for Employers. He was unaware of it's existence and unable to produce a copy. Kim showed him a copy of the Handbook for Employers. The clerk had never seen this publication either. He told Kim that she should refer to it by it's publication number M-274, rather than as the Employer Handbook. (Note: *On the I-9 Form itself it states that copies of the I-9 and the Handbook for Employers are available at the local INS offices.*)

Kim spent four hours trying to get the I-9 Form and waited five days to receive it and the Employer Handbook from the INS.

Another problem is that many small employers are being fined substantial amounts for errors made in completing the I-9 Form.

There is too wide a discrepancy between what our government expects from small businesses and what small businesses are capable of doing. Small businesses often do not have the time, knowledge, and other resources to comply with many regulations, including the current I-9 requirement. A Telephone Verification System will make it feasible for employers to meet the INS requirements.

CAIB supports AB 507. We compliment you for introducing this type of legislation.

We would appreciate your acknowledgment of this correspondence and would be interested in any comments you have on the matter. The small business people of California want to know how much their opinion counts in legislative decisions. Thank you for your prompt reply.

Respectfully,

Amy Mitting
President

ACLU

AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE

Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
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Sacramento, CA 95814
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December 7, 1995

The Honorable Grace Napolitano
State Capitol, Room 6012
Sacramento, California 95814

Re: Opposition to INS's Telephone Verification "Pilot" & AB 507

Dear Chairwoman Napolitano:

The ACLU opposes the INS verification "pilot" program and AB 507 for the reasons summarized in the attached letter mailed to members of Congress regarding the implementation of a national worker registry, dated June 6, 1995. This "pilot" is a step toward implementing a national registry and raises many of the same issues.

The attached letter opposing a national registry was signed by 15 national organizations and over 50 individuals from across the political spectrum. The **National Federation of Independent Business** and the **Small Business Survival Committee** as well as individuals from the **Hoover Institution**, the **Heritage Foundation** and the **Cato Institute** signed this letter.

If you or your staff wish to discuss this matter further, please contact our office.

Very truly yours,

Francisco Lobaco

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

cc: Members and Consultant, Select Committee on Statewide Immigration Impact

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Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
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(415) 621-2493

ACLU of Southern California
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
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ACLU of San Diego & Imperial Counties
Linda Hills, *Executive Director*
1202 Kettner Blvd • Suite 6200
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June 6, 1995

Dear Member of Congress:

We are writing to express our concern that both Congress and the Administration are moving toward the implementation of a national worker registry. We believe such a plan put forward in the name of immigration control, is both misguided and dangerous for the following reasons:

It will not work. Those employers who rely on undocumented labor are already violating the law; they do so intentionally and are unlikely to use a verification system. Instead, they will continue to violate the law by hiring undocumented workers while employers who already comply with the law are subjected to new, costly requirements for the hiring process.

Faulty data. The data which a nationwide verification system would use would rely on two highly flawed data bases, one by the Social Security Administration (SSA) and the other the Immigration and Naturalization Service (INS). Both are notorious for containing incorrect or outdated information, with error rates as high as 28 percent. Roughly 65 million Americans either enter the work force or change jobs every year. Even an error rate of no higher than one percent would mean that 650,000 Americans could be denied jobs every year.

An unfunded mandate on employers. The creation of a national verification system for every workplace in America would present a huge administrative burden to the nation's employers, especially small business. All employers would be required to ask the federal government's permission every time they want to hire somebody. Americans want fewer burdensome regulations, not new ones.

A threat to privacy and civil rights. Worker registry proposals ask Congress to create a database of personal information on all Americans and make it accessible to all employers. The openness of the proposed systems raises barriers to controlling and monitoring the use of information. Such systems are prone to abuse by persons who use it to selectively screen individuals whose appearance, surname or accent suggests they are foreign or to screen such persons outside of the context of employment. In addition, government often lacks the political will to limit access to information once collected. Indeed, other purposes for the data base are already being proposed, including verifying eligibility for public benefits, tracking childhood immunizations, and tracking child support payments. Once a system of information on all Americans is in place, it will inevitably become ubiquitous in American life, presenting an enormous threat to the privacy and liberty of Americans.

We believe it is unwarranted and unwise to create a data system involving 100 percent of Americans in an effort to identify the 1.5 percent who live illegally in the United States. We urge you to oppose the creation of a nationwide verification system.

Sincerely,

NATIONAL ORGANIZATIONS

American Civil Liberties Union (ACLU)
American Father's Association
American Immigration Lawyers Association
Center for Democracy and Technology
Citizens for a Sound Economy
Immigration and Refugee Services of America
MALDEF, Los Angeles
National Asian Pacific American Legal Consortium
National Association of Korean Americans
National Council of La Raza
National Federation of Independent Business
Organization of Chinese Americans
Small Business Survival Committee
Southwest Voter Registration Education Project
U.S. Hispanic Chamber of Commerce

INDIVIDUALS

Martin Anderson, Hoover Institution
Stuart Anderson, Alexis de Tocqueville Institution
Ronald Bailey, Think Tank
Bernard Baltic, Reason Foundation
Gary Bauer, American Renewal
Douglas Besharov, American Enterprise Institute
Morton C. Blackwell, Conservative Leadership PAC
David Boaz, Cato Institute
Clint Bolick, Institute for Justice
Matthew Brooks, National Jewish Coalition
Phillip M. Burgess, Center for the New West
Merrick Carey, Alexis de Tocqueville Institution
Linda Chavez, Center for Equal Opportunity
Bryce Christensen, Editor, The Family in America
Jeff Eisenach, Progress & Freedom Foundation
Michael Farris, National Center for Home Education
Diana Furchtgott-Roth, American Enterprise Institute
Steve Gibson, Bionomics Institute
Stina Haus, Vista Hospital Systems
Robert B. Helms, American Enterprise Institute
Rick Henderson, Reason
John Hood, Bradley Fellow-Heritage Foundation
David Horowitz, Center for the Study of Popular Culture
Joseph J. Jacobs, Jacobs Engineering Group
Paul Jacobs, U.S. Term Limits
Kent Jeffreys, National Center for Policy Analysis
Thomas L. Jipping, Free Congress Foundation
Donna Kelsch, YMCA, NY
Jack Kemp, Empower America
Manuel S. Klausner, Kindel & Anderson
David Koch, Koch Industries
William Kristol, Project for the Republican Future
James P. Lucier, Jr., Citizens Against a National Sales Tax/VAT
John McClaughry, Ethan Allen Institute
Donald N. McCloskey, Professor of Economics and History, University of Iowa
Michael T. McMenamin, Walter & Haverfield
William H. Mellor III, Institute for Justice
Stephen Moore, Cato Institute
Amy Moritz, National Center for Public Policy Research
Reverend Craig B. Mousin, United Methodist Church of Christ
Richard S. Newcombe, Creators Syndicate
Grover Norquist, Americans for Tax Reform
Walter K. Olson, Manhattan Institute
Ellen Frankel Paul, Social Philosophy & Policy Center at Bowling Green State University
Jeffrey Paul, Social Philosophy & Policy Center, Bowling Green State University
Sally Pipes, Pacific Research Institute
Joyce Antilla Phipps, Clinical Professor at Seton Hall University
Robert W. Poole, Jr., Reason Foundation
Steven R. Postrel, Graduate School of Management at the University of California at Irvine
Virginia Postrel, Reason Foundation
T.J. Rodgers, Cypress Semiconductor
Michael Rothschild, Bionomics Institute
Rev. Don Smith
Phyllis Schlafly, Eagle Forum
Dr. Christine Sierra, University of New Mexico
Julie Stewart, Families Against Mandatory Minimums
Ron K. Unz, Wall Street Analytics
Paul Weyrich, Free Congress Foundation
Richard J. Wilson, Professor, American University
Cathy Young, Women's Freedom Network
Benjamin Zycher, Department of Economics UCLA

LOCAL ORGANIZATIONS:

Albuquerque Border City Project
Asian Law Alliance
Asian Pacific American Legal Center of Southern California
Asylum and Refugee Rights Law Project
AYUDA
California Humane Development
Californians United for Equality
Center for Immigrant Rights
Chicago Coalition for Immigrant and Refugee Protection
Coalition for Humane Immigration Rights of Los Angeles (CHIRLA)
Coalition for Immigrant and Refugee Rights and Services
Dominican Sisters of San Rafael, CA
El Centro Hispanoamerico, NJ
Immigrant Legal Resource Center, San Francisco
Immigrant's Rights Project
Immigration Law Project
Independent Women's Forum
International Assistance Program of Alabama, Inc.
International Institute of Los Angeles
Korean Youth and Community Center, Los Angeles
Lawyer's Committee for Civil Rights
Legal Assistance Foundation, Legal Services Center
Massachusetts Immigrant and Refugee Advocacy Coalition, Boston
New York Immigration Coalition, NY
North Texas Immigration Coalition of Dallas
Northwest Immigrant's Rights Project
Pacific Research Institute
Proyecto Adelante
Proyecto Libertad, Texas
Riverside Language Project, New York
Santa Clara County Network for Immigrant & Refugee Rights & Services
Sponsors to Assist Refugees, Portland, OR
Travelers and Immigrants Aid

California Farm Bureau Federation

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Telephone: (916) 446-4647

December 1, 1995

Honorable Grace Napolitano,
Chairperson
Assembly Select Committee of Statewide
Immigration Impact
State Capitol
Sacramento, California 95814

Dear Ms. Napolitano:

Thank you for asking me to testify at your immigration hearing in Los Angeles on December 8.

I regret that I will be unable to participate because of our annual meeting scheduled for next week in Monterey. In addition we will be traveling to Washington D.C. on December 7 to provide testimony before two House Committees concerning our position on immigration reform.

I have attached a statement by our president, Bob L. Vice, given before the U.S. Senate Judiciary Committee on September 28, 1995. It provides our position on employment verification, increased border enforcement, employer sanctions, and the need for a new seasonal alien agricultural worker program.

If you have questions concerning any of our positions, please don't hesitate to contact me.

Sincerely,

J. Roy Gabriel
Legislative Director
Labor Affairs

Enclosure:

Statement of Bob L. Vice
on behalf of the
National Council of Agricultural Employers
and American Farm Bureau Federation

Before the

Immigration Subcommittee of the
Senate Judiciary Committee

September 28, 1995

Mr. Chairman:

My name is Bob Vice. I am President of the California Farm Bureau Federation (CAFB). I am submitting my comments today on behalf of the National Council of Agricultural Employers and the American Farm Bureau Federation on whose Boards of Directors I serve.

The National Council of Agricultural Employers (NCAE) is a Washington, D.C. based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in fifty states who hire about 75 percent of the national agricultural workforce. Its members include farm cooperatives, growers, packers, processors and agricultural associations. NCAE was actively involved in the legislative process that resulted in the enactment of the Immigration Reform and Control Act of 1986 (IRCA). NCAE's representation of agricultural employers gives it the background and experience to provide meaningful comments and insight into issues concerning immigration policy and how it affects the employment practices of its members' businesses and the availability of an adequate agricultural labor supply.

NCAE is filing this statement jointly with the American Farm Bureau Federation (AFBF). The American Farm Bureau Federation is the nation's largest general farm organization. Farm Bureaus in all 50 states and Puerto Rico represent some 4.4 million member families nationwide. Farm Bureau's farm and ranch members are engaged in the

production of virtually every agricultural commodity grown commercially in the United States. AFBF's members are similarly affected by the pending immigration reform legislation.

NCAE and AFBF have examined the bill reported out of the Subcommittee (S. 269) and concluded that if enacted, it will have a significant effect on the availability of the future agricultural labor supply in the U.S. As we monitor the current immigration reform legislation in Congress, we are mindful of the potential impact it will have upon agricultural production in this country. For example, the most labor intensive agriculture in this country, fruit, vegetable and horticultural production, generates sales valued at $23 billion annually.[1] As a result, we believe that any legal immigration proposal considered by the Subcommittee must ensure that an adequate labor supply is available to meet the future labor needs of this vital and expanding area of U.S. agricultural production, as well as of those commodities that are less labor intensive but have difficulty attracting sufficient domestic workers. We believe that this can be achieved in a manner consistent with illegal and legal immigration reform through alteration of the existing "H" nonimmigrant temporary alien programs.

1. The Anticipated Effects of Immigration Reform on Agriculture

A. Establishment of a Simplified Verification System

NCAE and AFBF support efforts of Congress to simplify and bring integrity to the employment process. We encourage initiatives to simplify the hiring process by reducing the number of documents acceptable for employment eligibility verification. Hopefully, this will lessen confusion and help establish a more efficient hiring process that is so important to the extensive seasonal field hiring that is characteristic of labor intensive agriculture. It also is likely to reduce the discrimination that is an unintended by-product of IRCA. To the extent that reform results in a reduction in the use of fraudulent documents as a result of a simplified verification system, it promotes the integrity of our borders, efficiency in the business of farming and removes the uncertainties that can increase inadvertent noncompliance with the law.

Both NCAE and AFBF were actively involved during the debate and development of the Immigration Reform and Control Act of 1986 (IRCA) and supported its enactment and implementation. Because of the extensive seasonal employment in agriculture, farmers are

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[1]1992 Census of Agriculture, Bureau of the Census, U.S. Department of Commerce, Vol. 1, part 51, U.S. Summary (Oct. 1994).

often involved in hiring numerous persons during peak seasonal times of the year. This results in constant exposure to the compliance demands of IRCA.[2] During the past ten years our industry has engaged in extensive training of agricultural employers, often in conjunction with INS and the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), regarding compliance with the employer sanctions and discrimination provisions of IRCA.

Notwithstanding the industry's educational efforts, surveys of agricultural employers indicate that employment eligibility verification (the Form I-9 process) is still confusing and time-consuming. One of the major complaints about the Form I-9 process is that the number of acceptable documents for work authorization purposes is too large and that the acceptability of many documents is unclear.

This becomes especially difficult for agricultural employers during peak hiring periods when large numbers of workers are hired in the field. Completion of the Form I-9 for large numbers of field workers can be an arduous process, especially where there are language difficulties. Moreover, employers knowledgeable about the document abuse provisions of IRCA (8 U.S.C. §1324b(a)(6)) are hesitant to refuse to accept uncommon documents about which they are uncertain as to their acceptability for work authorization purposes. Under IRCA's document abuse provisions, employers are charged with a per se violation of the Act if they request more or different documents than are required or refuse to accept tendered documents that appear on their face to be genuine. The Subcommittee is to be commended for taking a step in the right direction in section 114A of S. 269 by imposing an intent requirement as part of the document abuse provisions.

Employers face a "Catch-22". The primary problem with the current law is that IRCA's employer sanctions and (Section 274A) and document fraud provisions (Section 274C) send a strong, simple message: scrutinize employment documents carefully or face significant fines. IRCA's anti-discrimination provisions (Section 274B) send an equally strong and conflicting message: scrutinize employment documents too carefully or ask for them without using the precise choice of words required by the document abuse provisions and face significant fines. These provisions send a contradictory message to employers, making proper compliance an anxiety-laden process with few clear guidelines.

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[2] The 1987 Census of Agriculture reported 818,347 farms hiring labor, and a gross payroll of $10.9 billion. In addition, the census reported that 272,000 farms used contract labor and paid a total of $1.8 billion in contract labor expenses. The U.S. Department of Labor summarized that as of May, 1993 there were 13,711 licensed farm labor contractors that reported employment of 488,223 workers. While there is no equivalent data on employment by farmers, the 1982 Census of Agriculture, which reported roughly the same number of farms hiring labor as were reported in 1987, reported 4.856 million "hires" during the year. This statistic reflects the large amount of seasonal employment and multiple job holding which occurs in agriculture.

We welcome efforts by Congress to reduce the confusion created by this contradiction. A reduction in the number of documents acceptable for employment eligibility verification purposes is a step in the right direction. It is anticipated that this would decrease the amount of time required to process new hires and hopefully reduce the likelihood that conscientious employers would inadvertently violate IRCA's discrimination provisions while trying to ascertain the legitimacy of uncommon or questionable documents.

As we understand the provisions of S. 269, they seek to establish initially through pilot programs, and ultimately a permanent automated system, a process that will reliably determine whether a person offering an employment document is eligible to work. It also seeks to reduce the number of acceptable employment verification documents and to make them resistant to counterfeiting and tampering. As I have indicated, a positive result of this approach hopefully would be simplification of the hiring process and reduction in discrimination, benefitting both employers and workers. For the agricultural industry, it also has the potential to significantly reduce our workforce.

As noted in the Report of the Commission on Agricultural Workers (CAW Report) created by IRCA, employer sanctions have been ineffective in preventing unauthorized aliens from crossing the southern border in large numbers. As stated in the CAW Report:

> "While the majority (of unauthorized workers) find employment in industries other than agriculture, a significant number join the farm labor force. With fraudulent documents easily available, employer sanctions have been largely ineffective."[3]

The CAW Report cites government studies in the late 1980's and early 1990's indicating that the unauthorized harvest workforce ranged between 12 and 35 percent, dependent upon the crop and area.[4] Reports from INS and individual agricultural employer audits indicate that the percentage of unauthorized workers can range as high as 50 to 70 percent. The CAW Report on the failure of employer sanctions and the large number of unauthorized workers is consistent with other testimony presented to this Subcommittee. Undoubtedly, it is a primary impetus for those provisions in S. 269 that seek a credible employment verification system.

Reports of large numbers of unauthorized workers in agriculture do not mean that farmers are ignoring the law. NCAE and AFBF would like to make it clear that the vast majority of agricultural employers comply with their legal obligations under IRCA. They do not seek to hire unauthorized workers and they comply with the employment eligibility verification requirements of the law. As noted above, agricultural organizations throughout

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[3]Commission on Agricultural Workers, **Report of the Commission on Agricultural Workers, Executive Summary**, p. 2 (November 1992).

[4] Commission on Agricultural Workers, **Report of the Commission on Agricultural Workers**, p. 53 (November 1992).

the U.S. have engaged in extensive education and compliance training of agricultural employers regarding IRCA's requirements. What the CAW and other reports evidence, however, is that it is easy for unauthorized workers to obtain fraudulent documents that on their face appear genuine and which employers must accept under current legal standards. Employers refuse to accept employment documents at the risk of violating IRCA's discrimination provisions.

We support the Subcommittee's efforts to end the use of fraudulent documents and employment of unauthorized workers in the U.S. Given the estimates of the large percentage of workers in agriculture with fraudulent documents which will be excluded by the implementation of an effective verification system, we are concerned about the impact on the agricultural labor supply. While we are not now claiming that there are major and widespread labor shortages in agriculture, such shortages are likely if the system sought by S. 269, or similarly, the telephonic verification system included in its House counterpart (HR 2202), is effectively implemented in the future.

B. Increased Border and Interior Enforcement and Employer Sanctions Penalties

In addition to establishment of an effective verification system, S. 269 also seeks to control the entry of illegal aliens seeking employment in the U.S. through increased border control and interior enforcement. The bill authorizes sizeable increases of border patrol agents and establishment of an Office for the Enforcement of Employer Sanctions. In addition, the bill substantially increases the fines for violations of the employer sanctions provisions of the law and the related employment verification I-9 Form completion requirement. It also increases penalties for employer sanctions violations where an employer has been previously found liable for labor law violations. The role of the Department of Labor is increased with regard to investigations of violations of the employer sanctions provisions and INS is encouraged to seek and obtain fines for violations by a provision that would allow it to keep fines in excess of $5 million annually to fund enforcement activities.

There are several provisions in S. 269 that we find troubling and hope are removed as S. 269 moves its way through the legislative process. First, section 125 of the bill, while perhaps well intended is overly broad. It allows the government to seize and forfeit the farms and ranches of persons if they are found to have employed one alien not authorized to work in the U.S. While the provision provides a defense if an owner lacks knowledge of the offense, it is virtually meaningless since forfeiture attaches where an employee or agent of the owner employs the alien. In most cases, owners delegate hiring to employees and agents and it is unreasonable and punitive to allow government seizure of farms and ranches for a violation over which an owner had no control.

Second, section 182 of S. 269 repeals the requirement put into the law in IRCA that would require INS officials to obtain a search warrant before seeking to apprehend aliens on outdoor agricultural property. This provision was placed in the law with the support of both employers and worker advocates. It places agricultural businesses on the same footing as other businesses and to our knowledge has not impeded INS' ability to carry out its duties nor has it inhibited federal and state law enforcement authorities from apprehending criminal aliens. The search warrant requirement is narrow in scope, contains numerous exceptions and does not apply to law enforcement agencies other than INS. In our view, it has fostered greater cooperation between border patrol and INS officials and our farmer and rancher members and should be retained.

Effect of Border Control Efforts

What is the effect of current efforts at border interdiction and expansion of such efforts through authorization of and appropriation of funds for more border patrol and land border inspectors? Expanded border control efforts near San Diego and in Texas have had an impact on the agricultural labor supply. As such efforts expand, we expect an even greater effect. Reports of labor contractors and others working closely with migrant workers from the southern border indicate that it is increasingly difficult for migrant farmworkers to cross the Mexico-U.S. border.

While we applaud the success of INS' efforts in this area, it means that a portion of the agricultural labor supply believed to be work authorized in the U.S. apparently is not, otherwise it would not encounter difficulty in entering the U.S. Properly authorized workers would simply enter through ports of entry with proper documents. Given the extensive appropriations sought by the President to expand border control efforts, we expect that such efforts will increasingly become successful and impact the agricultural labor supply.

Effect of Increased Interior and Employer Sanctions Enforcement

It is clear from the President's FY 1996 budget request relating to illegal immigration control, the recommendations of the Commission on Immigration Reform (CIR) headed by Barbara Jordan, and the provisions of S. 269 reflecting many of the CIR recommendations, that there is a strong commitment on a bipartisan basis to help control illegal immigration. A major part of this commitment is sought to be achieved through expanded penalties for offenses relating to the hiring of unauthorized aliens and a concomitant will to fund enforcement activities directed at those employing unauthorized workers.
We anticipate that such efforts will be focused on industries such as agriculture which have historically employed large numbers of alien workers.

If the heightened penalty provisions of S. 269 are enacted, especially those relating to asset forfeiture and significantly increasing employer sanctions fines, and resources are available for their aggressive enforcement, NCAE and AFBF expect that they will have a significant impact upon the agricultural workforce. Historically, enforcement activities

against employers, which invariably result in apprehension and/or deportation of farmworkers, tend to drive other unauthorized workers in the area out of the job market because of fear of apprehension. To the extent that the elevated penalties of S. 269 are sought against growers on a widespread basis, knowledge of such enforcement efforts will become widely known and will lead to greater scrutiny of job applicants and employees. If the asset forfeiture provisions for the employment of an unauthorized worker become part of the law, it is likely that employers will more readily exclude workers about whose status they have any questions, rather than risk loss of the farm and other property.

Given the estimates of the percentages of workers in agriculture that possess employment authorization documents that growers must accept under the law but which are in fact fraudulent, coupled with expanded enforcement efforts by INS and DOL officials authorized by S. 269, it is anticipated that agricultural labor supply will be disrupted.

C. Conclusion

If S. 269 realizes its objectives, it will achieve the control of illegal immigration that IRCA has been unable to accomplish. Through expanded border interdiction efforts, broadened penalties and remedies for offenses related to the hiring of undocumented aliens, and phase-in of an automated employment verification system tied to counterfeit-proof documents, S. 269 will affect the availability of an adequate future labor supply for agriculture.

The Commission on Agricultural Workers realized this likelihood when it concluded that "more effective enforcement of employer sanctions would affect the supply of farm labor and could necessitate access to additional legal foreign workers."[5]

While NCAE and AFBF support the purposes, if not all of the means to achieving these immigration control initiatives, responsible public policy dictates that they be adopted in conjunction with amendments that will balance their impact on the agricultural labor supply by providing an effective temporary and seasonal alien agricultural worker program.

2. Comprehensive Immigration Reform Requires Amendment of the "H" Temporary and Seasonal Alien Worker Program for Agriculture

A. Current Programs Do Not Adequately Meet Agricultural Labor Shortages

As discussed above, agriculture anticipates that S. 269 and its House counterpart, H.R. 2202, will affect its future labor supply, especially in combination with border and

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[5]Commission on Agricultural Workers, **Report of the Commission on Agricultural Workers, Executive Summary**, p. 4 (November 1992).

interior enforcement initiatives. NCAE and AFBF strongly believe that comprehensive immigration reform as proposed by S. 269, which includes significant alterations of IRCA after nearly ten years experience with that law, is incomplete if it fails to address the lack of an adequate program to provide temporary and seasonal alien agricultural workers when there are shortages of domestic workers. We strongly urge the Subcommittee to review the adequacy of the existing program and believe that, once it has done so, it will conclude that the "H" temporary and seasonal alien worker program needs amendment to make it workable for its intended purpose.

When IRCA was enacted in 1986 it contained a seasonal agricultural worker (SAW) program with a component replenishment agricultural worker (RAW) program. SAW workers are not required to work in agriculture and many of them have sought work in other industries. While the SAW program legalized persons with a history in perishable agriculture, the RAW program was intended to provide a replenishment mechanism in the event of agricultural worker shortages. The RAW program sunsetted in 1993 without ever being invoked by the agricultural industry.

The only remaining means of meeting agricultural worker shortages is the H-2A program. Users of that program also sought to amend it when IRCA was enacted in order to eliminate those features that had historically been impediments to its successful usage. The 1986 amendments to the H-2A program have not made the program any more workable for many of its users. I understand you will receive testimony from users of the program that detail its deficiencies and inadequacies.

As we face immigration reform in this Congress, this Subcommittee must address the fact that the RAW program has sunsetted and the H-2A program does not work for many who have attempted to use it, despite a major effort to make it workable through amendments to IRCA. As you undergo your review of IRCA and other immigration laws and amend them to achieve a workable illegal and legal immigration policy, we believe that you must amend the temporary and seasonal alien agricultural worker provisions to provide a safety valve in the event anticipated domestic labor shortages occur as a result of the enactment of S. 269 or a similar measure.

Such an amendment is totally consistent with your efforts during the current reform effort. Moreover, it responds to the recommendation of the CAW Report that Congress should review the provisions of the H-2A program, "in view of the criticism of and litigation surrounding the current" program.[6]

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[6] Commission on Agricultural Workers, **Report of the Commission on Agricultural Workers**, p. 134 (November 1992).

B. The Components of a Temporary and Seasonal Alien Agricultural Worker Program

A substantial portion of labor intensive agricultural production involves perishable commodities. In states such as California, over 250 varieties of labor intensive commodities are produced which require an adequate supply of labor to harvest them in a timely manner. The lack of an adequate number of workers during peak harvest time can result in the loss of crops which will rot or be unsuitable for marketing. The same is true for different types of agricultural commodities throughout the U.S. Other crops that are less perishable nonetheless require labor in a timely manner.

The existing H-2A program has failed to be a reliable source of temporary and seasonal alien agricultural workers for many who have tried to use it. It is characterized by extensive complex regulations that hamstring employers who try to use it and by costly litigation challenging its use when admissions of alien workers are sought. The regulatory burdens leave agricultural employers waiting with uncertainty and anxiety with regard to whether they will be certified by DOL to obtain workers in a timely manner. This is especially important with regard to the production of perishable commodities. For those employers who would like to use the program because of labor shortages, the regulatory burdens and litigation costs are a major disincentive to program use.

As a result, a workable program must be adopted that allows growers a reliable mechanism to meet labor needs in situations where domestic workers are unavailable. Given the cost, regulatory compliance obligations, and potential legal challenges to the use of any alien worker program, I can assure you that growers are only going to use such a program in what they anticipate to be emergency situations where domestic sources of labor are simply unavailable.

Among the components of a revised program that we urge the Subcommittee to consider and include as part of its legal immigration bill are the following:

o Substitution of a labor condition application (LCA) for the cumbersome and litigation-prone labor certification.

This component is central to any reform of the existing temporary worker program because it would eliminate the "bottlenecks" of the current program and would allow for the timely admission of workers. The H-1B provisions of the Immigration and Nationality Act (INA) enacted as part of IMMACT 90 provide a useful model. Prior to the enactment of the H-1B program, employers experienced the same obstacles to timely admission of skilled workers because of the regulatory impediments inherent in the labor certification process. The H-1B program adopted the LCA approach as a

more streamlined and efficient alternative. We believe that an LCA approach is especially well-suited to agricultural employment, given the often perishable nature of the crops and the need for timely admission of workers, most likely in emergency circumstances.

o Establishment of labor conditions that the employer will commit to, including agreement to pay the prevailing wage for the occupation and not to undercut the working conditions of domestic workers; use of aliens only in temporary or seasonal agriculture; prohibition of the use of such workers during a strike or lockout; filing of a job order with the state employment service for job opportunities in occupations for which the LCA is filed and a preference for the hiring of U.S. workers.

o Enforcement of program requirements through complaints against employers by aggrieved parties for failing to comply with the LCA or other program requirements. Employers violating the LCA could be debarred from the program in the future, as well as face backpay liability and administrative fines.

o After filing of the LCA, petitions for admission of workers should be filed with the INS. Counterfeit-proof visas should be issued to workers admitted under the program. This would help ensure that they can only work in agriculture and that they leave the U.S. upon expiration of their visas.

o Workers would be admitted for a period of no longer than 10 months for an individual employer.

o Aliens should have the same labor law protections afforded to domestic workers.

o The program should establish a trust fund in which a percentage of an alien's wages would be withheld and returned to him/her upon return to their country of origin in a timely manner in compliance with the terms of their visa. This would provide a "carrot" for timely return of temporary workers.

o Employers would have to pay an amount comparable to what they pay for FICA and FUTA taxes for domestic workers into a trust account to be used to fund the administration costs of the program.

We believe that the above elements of a temporary worker program for agriculture will address the Subcommittee's desire to limit the admission of alien workers, ensure that those admitted return to their countries of origin in a timely manner, and protect the jobs of domestic workers, while providing a safety valve program for agriculture that will ensure that aliens workers are admitted in a timely manner when labor needs are critical.

4. **Generalized Criticisms of Temporary and Seasonal Agricultural Worker Programs are Inapplicable to the Above-Proposed Program Amendments.**

Having set forth the need for amendments to the temporary worker provisions of the INA to meet the anticipated needs of agriculture, once S. 269 or similar immigration reform legislation is enacted, it is important to address the generalized criticisms leveled at any alien agricultural worker programs. We believe that the components of a workable program outlined above stand on their merits. Outlined below are the most common criticisms of any temporary alien worker program for agriculture and responses explaining their inapplicability to the amendment we propose.

A. The Absence of a Current Widespread Labor Shortage Does Not Justify Delaying Program Development Until Such a Shortage Exists.

Critics of a temporary agricultural worker program argue that there is not a current shortage of agricultural workers and that a program to address such a need, if it occurs, should await evidence of a problem. This criticism ignores the fact that there is not now a shortage of agricultural workers only because immigration control has not been effective in preventing employment of unauthorized workers. Earlier I pointed out that both empirical studies and evidence from INS audits and raids indicates a high proportion of unauthorized workers in the agricultural work force. S. 269 and H.R. 2202 are before the Congress primarily to rectify this problem. We believe, and I am sure the members of this Subcommittee believe, that these measures will be effective in curtailing document fraud and the employment of unauthorized workers. This will remove a significant number of workers from the agricultural work force.

It would be irresponsible for Congress to wait for a shortage to develop before addressing this problem. Irreparable harm would be done to agricultural producers and the competitive position of U.S. agriculture. Even if the "need" manifest itself in a dramatic fashion, with crops rotting in the fields, many producers could not recover from such a financial disaster by the time Congress enacted a temporary worker admission program. But the "need" is likely to manifest itself in far less dramatic fashion, that is less likely to get the attention of Congress. It is likely to manifest itself in the slow erosion of the competitive position of U.S. producers, who gradually reduce or abandon production of labor intensive commodities, until one day we awake and wonder why the U.S. is no longer competitive in world markets for labor intensive agricultural products, and where all the jobs went that this production used to support.

Congress correctly anticipated that the immigration control measures included in the Immigration Reform and Control Act of 1986 could produce seasonal agricultural labor shortages, and included the Seasonal Agricultural Worker (SAW) and Replenishment Agricultural Worker (RAW) programs in the legislation, as well as attempting to streamline the H-2A program. The SAW and RAW programs have now terminated, and the intended

streamlining of the H-2A program has been a dismal failure. In reforming immigration control once again, to correct the inadequacies of the 1986 legislation, Congress should not overlook the reform of this important aspect of the program.

B. Temporary and Seasonal Workers Will Not Ignore Their Visa Limitations and Remain in the U.S. Permanently.

Critics of a temporary agricultural worker program hold out the specter that such a program will create a "loophole" in immigration reform. They contend that once aliens gain entrance to the United States, they will not leave and will insinuate themselves into the population. The European experience with guestworker programs, where the guestworkers put down roots and were loath to leave, is often cited as an example of this problem.

The best evidence to refute this criticism is past experience. U.S. agricultural migrants are totally unlike the European guestworkers, who were admitted, often with their families, to take essentially permanent jobs for "temporary" periods of several years or more. By the time it was time for them to leave, they had lost touch with their home country and often had put down family roots in their adopted country.

Those who migrate seasonally to do agricultural work in the United States, including those who migrate illegally, generally remain in the United States only for the agricultural season. At the end of the season they return to their home countries even now, when there is little incentive for them to do so. They generally do not bring their families with them, and maintain strong family ties to their home communities. Many of them are small peasant "farmers" in Mexico who take advantage of the complementarity of the U.S. and Mexican growing seasons. We are told that one of the ironies of the increased effectiveness of current border interdiction efforts by the Border Patrol is that illegal migrants who habitually return home at the end of each season are now fearful of leaving the country for fear they will not be able to get back in.

Although INS has sometimes produced statistical data suggesting otherwise, grower experience with the H-2A program is that the AWOL rate among aliens is very low.[7]

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[7] I understand that INS officials have cited statistics allegedly showing the absence of departure records for many H-2A aliens. Yet when INS has attempted to cite growers for liquidated damages for workers who INS's records show failed to depart the country, as provided for in INS regulations, growers have produced evidence that the workers had in fact departed the U.S. and often had already been readmitted from their home countries for subsequent contracts. Our conclusion from this experience is that the absence of departure records for H-2A workers is due not to the fact that the workers fail to depart, but that INS's departure records are deficient. H-2A growers' experience in trying to get departures of workers recorded for the purpose of admitting replacements also attests to the difficulty of recording a legal departure on the Mexican border.

Seasonal migrant aliens value the right to enter and reenter the United States legally, and are loath to jeopardize that right. INS apprehension statistics during the Public Law 78 "Bracero" program are also instructive in this regard. INS apprehensions of illegal entrants reached a level of more than one million shortly after the start of the "Bracero" program in 1951. By 1956, when the program had reached near peak employment, apprehensions had fallen to about 100 thousand, and remained at about that level until the program was terminated in 1964. After 1964 apprehensions began a steady rise, reaching a quarter million by 1968 and a half million by 1972 and again exceeding one million by 1978.[8]

Finally, we must realize that currently there is an incentive for an alien to remain in this country. Genuine-appearing fraudulent documents are readily available. With these documents an alien can readily obtain employment. But when employment authorization documents are subject to verification, the option of remaining in the United States and working after a period of legal admission has expired will no longer exist. There will be even more incentive for aliens to protect their ability to migrate and work legally through a temporary worker program.

C. The Industry Program Described Above is Clearly Distinct from the "Bracero" Program.

The Mexican Bracero program was one in a series of Congressional and administrative actions designed to respond to the problem of an inadequate supply of seasonal agricultural workers.[9] When the Bracero program was enacted there were few statutory protections even for U.S. farmworkers. Farmworkers were not covered by the Fair Labor Standards Act until 1966 and by Unemployment Insurance until 1976. The Migrant and Seasonal Agricultural Worker Protection Act, the most comprehensive Federal statute covering agricultural workers, was enacted in 1982. Numerous other Federal, state and local labor laws have been enacted, or their coverage expanded to include agricultural workers in recent years.

The Bracero program was intended to provide a needed supply of legal foreign workers while protecting foreign workers from exploitation and protecting employment opportunities and wages of U.S. farmworkers. Some feel the program did not adequately achieve these goals. The principal criticisms of the program were the "contract labor" concept under which it operated, inadequate statutory guidelines and enforcement, and insufficient funds for its administration.

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[8] 1993 INS Statistical Yearbook, p. 156.

[9] Legislation authorizing the program was enacted as Title V of the Agricultural Act of 1949, and was signed into law as P.L. 78 on July 12, 1951.

No one is proposing a return to the relatively unregulated Bracero program. The temporary alien worker admission program advocated by agricultural employers bears no resemblance to the Bracero program, and attempts to characterize it as such are clearly erroneous and irresponsible. As I have described earlier, the temporary worker program advocated by the agricultural employer community includes specific protections for both U.S. and alien workers, and makes them subject to all applicable federal, state and local labor laws. Finally, the program includes a user fee to provide funds for administration of the program.

D. Agricultural Employment is Not Low Wage Employment; Increasing Wage Rates Will Not Attract Sufficient Domestic Workers to Replace Lost Aliens, But Will Reduce U.S. Competitiveness and Market Share.

Some critics of a temporary agricultural worker program contend that growers are merely seeking a source of low wage workers, and that raising wages would eliminate any "shortage" of domestic labor. This criticism is erroneous, and lies at the heart of why a temporary agricultural worker program is good public policy that benefits U.S. workers.

Agricultural work is not low wage work. You might be surprised to know that the average earnings of nonsupervisory agricultural field workers in the United States in 1994 were $6.02 per hour, well above the minimum wage.[10] For workers paid piece rates, average earnings were $7.02 per hour. In California, crop workers averaged $6.51 per hour in 1994 and averaged 41.5 hours of work per week when they were working.[11] These hourly earnings exceed those for many, if not most, entry level occupations in our state.

The difficulty in obtaining sufficient domestic workers is not due to low wages, but to a combination of other factors inherent in seasonal agricultural work. First is the fact that domestic workers quite naturally prefer the security of full-time agricultural or nonagricultural employment, or of longer term seasonal agricultural employment in jobs such as packaging and processing, rather than the shorter term seasonal job tenure usually associated with field work. Therefore the available domestic work force tends to fill the year round and longer term seasonal jobs, leaving the shorter term seasonal jobs unfilled. Secondly, domestic workers prefer the working conditions involved in packing and processing jobs, which are generally performed indoors and do not involve the degree of strenuous physical labor associated with field work. Finally, many seasonal agricultural jobs are located in areas where it is necessary for workers to migrate into the area and live temporarily to do the work. Fewer and fewer U.S. workers are willing to become migratory

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[10]Farm Labor, National Agricultural Statistics Service, U.S.D.A. Sp Sy 8 (11-94).

[11]California Agricultural Employment and Earnings Bulletin, Economic Development Division, State of California. July, 1995.

farmworkers, and given the U.S. social support system, are not compelled to do so. Foreign workers, on the other hand, are willing to migrate (they must do so to get here at all!), and fill in the shorter term seasonal and field jobs left after the indigenous work force has filled the more desirable positions.

It can be argued that our "shortage" is, nevertheless, economic. At some wage, U.S. workers would be willing to take seasonal field jobs, notwithstanding the factors noted above. That may be true. I have no idea what that wage rate would be, and I can tell you the question is academic, because before wages reached that level, U.S. production would long since have become uneconomic and moved elsewhere. I am not going to pretend to be an economist, and there is an economist on this panel already, but I do want to tell you from a practicing farmer's standpoint that the wages I and other farmers can afford to pay are set by our competitors, who are increasingly overseas producers, and the decisions we as U.S. farmers make are whether and how much we can profitably produce at the prices we can get. That is what affects whether we can afford to hire labor as well as whether we can afford to purchase all the other inputs required to produce our crops.

E. The Existence of Unemployed Workers, Future Welfare Reform, and Legalization of Spouses and Children of U.S. Citizens and Permanent Resident Aliens Will Not Provide the Solution to Agricultural Work Force Needs.

Unemployment data, including unemployment data in agricultural producing areas, are sometimes cited as evidence that domestic workers are available. Others have suggested that the spouses and children of recently legalized aliens who are now becoming eligible for admission to the United States will provide a source of agricultural labor. Finally, some have suggested that welfare reform proposals that could terminate the benefits of welfare recipients after specific periods of time will force these individuals into the agricultural work force.

With respect to unemployed workers, there are plenty of actual and potential farmworkers who are unemployed between jobs, and before and after the agricultural season. I have acknowledged that as one of the characteristics of seasonal agricultural work that makes it unattractive to U.S. workers. I can tell you from personal experience that workers who claim to be unemployed <u>during</u> the agricultural season in the area where they live are either victims of highly unusual weather such as we have had during a couple of recent seasons in California, or they don't really want to work. For the past several years we have had an extremely tight labor market during periods of high seasonal demand, even with the availability of aliens who have access to fraudulent documents. Claims of in-season "surpluses" of agricultural labor are just plain spurious.

With respect to dependents of legalized aliens and persons whose welfare eligibility is terminated, these are highly speculative sources of labor at best. How many dependents of legalized aliens will even be potential agricultural workers is open to serious question, since most of them will be older parents or young children. Furthermore, the likelihood that these individuals will join the migrant farmworker stream, rather than settling down with their families, seems low. It also seems unlikely that terminated welfare recipients, even those who are physically capable of doing field work, will be willing to leave the urban centers and become migrant farmworkers. And I have to raise the question, given the billions of federal dollars we have spent in this country over the past several decades trying to settle people out of the migrant stream, whether this is the policy we really want to pursue in this country.

But the most important point to make with respect to all these potential sources of labor is that employers have absolutely no incentive to use a bureaucratic program that sets costly standards if there are sufficient workers available without doing so. Critics claim, for example, that employers of H-2A aliens are simply after cheap labor. If that is so, why are there only 17,000 H-2A workers in a U.S. agricultural work force of more than 2 million? The employers I know who aren't in the H-2A program say they're not in it because it's too bureaucratic and expensive. No employer will needlessly commit to the kind of paperwork requirements, regulations and scrutiny entailed even in a reasonably workable temporary worker program such as the one we have proposed if there is labor available without doing so. If this program is not needed, I can guarantee you it will not be used, just as use of the H-2A program is uncommon and the RAW program was not used. But we are convinced that a supplementary source of alien labor will be needed, and that it is a Congressional duty and good public policy to assure that the mechanism is in place to address this need if, or when, it occurs.

5. Conclusion

Mr. Chairman and members of the Subcommittee, I appreciate your time in considering the importance of the immigration reform issue to U.S. agriculture. The organizations I represent commend you for your efforts to address the difficult but important issue of immigration reform. We feel that our industry can be a constructive partner in helping you achieve your objectives in a manner that furthers your reform goals, while maintaining a vital and competitive agricultural economy that is the most productive in the world and which will continue to generate domestic jobs in and outside of agriculture.

ate: Sat, 25 Nov 1995 08:07:24 -0800
rom: Nathan Newman <newman@garnet.berkeley.edu>
eply to: 187-L - Resisting and Organizing Against Prop 187
    <187-L@cmsa.Berkeley.EDU>
o: Multiple recipients of list 187-L <187-L@cmsa.Berkeley.EDU>
ubject: Universal ID Card is Already Here

UNIVERSAL ID CARD IS ALREADY IN EFFECT

-- Verification: California driver's license

is becoming proof of legal U.S. residence.

By Ken McLaughlin

Mercury News Staff Writer

While civil libertarians have battled the Big Brother in Proposition 187 and lambasted proposals for a tamper-proof identity card, one thing has escaped their notice. California already has such a card.

It's called a California driver's license.

For a year and a half now, the state Department of Motor Vehicles has checked the immigration status of all license applicants. Coupled with new technology that has made forgeries virtually impossible, the California driver's license is becoming proof of legal U.S. residence.

''It's become an identity document -- absolutely,'' said John Nahan, director of the U.S. Immigration and Naturalization Service document-verification program now used by the DMV. ''No one wants to admit it, but that's what has happened.''

The credit -- or the blame -- goes to state Sen. Al Alquist, D-San Jose. In 1993, he sponsored a bill to crack down on illegal immigrants who used licenses to establish ''proof'' of lawful residency to apply for welfare, food stamps and other benefits available only to legal U.S. residents.

Supporters of Alquist's efforts say the DMV has implemented the law so smoothly that the experience belies claims by foes of Proposition 187 -- the illegal immigration measure gutted Monday by a federal judge -- that the state can't screen illegal immigrants without racial or ethnic discrimination. The law's opponents counter that it has driven illegal immigrants further underground and forced tens of thousands to get behind steering wheels without proper training or car insurance.

Since March 1, 1994, new applicants for licenses have been asked to present one of 20 documents -- ranging from passports to birth certificates to work- authorization cards. No longer accepted for identification are easily forged foreign birth certificates, U.S. baptismal certificates or out-of-state driver's licenses.

DMV officials at first opposed Alquist's bill, predicting that screening would become a bureaucratic mess resulting in longer lines and shorter tempers at DMV offices. But that hasn't happened, said DMV spokesman William Madison.

In fact, in the program's first 19 months, the DMV processed more than 600,000 license and ID-card applications. Of those, only 2,100 were

rejected. More significantly, the DMV saw applications decrease by 3 percent, as ID-card applications dropped by a startling 28 percent.

DMV officials say the figures are proof that fraud was widespread before the program and that few people are now trying to pass off bogus INS documents. Most illegal immigrants, they say, are now avoiding the California DMV the way they've always avoided the U.S. Border Patrol.

When the program began, officials say, DMV workers were routinely offered bribes to accept suspicious documents; applicants often cried, begged or pressured fellow members of their ethnic group. When field offices routinely began photocopying INS documents, officials say, many people simply fled, often not even waiting to get their documents back.

The DMV program applies only to new-license applicants -- although some supporters want it to apply to renewals as well. Expanding the law would no doubt trigger a fierce legislative fight, since it would require all California drivers to march down to the DMV with proof of citizenry or legal status.

A handful of other states also ask applicants to prove they are in the country legally. But California is the first to tap into an INS database to verify status.

California's DMV has an agreement with the U.S. Immigration and Naturalization Service to use its Systematic Alien Verification of Entitlements (SAVE) program, developed in the late '80s as a way to stop illegal immigrants from receiving federal aid.

The DMV quickly became one of the program's biggest customers; about 10 percent of SAVE's 4 million annual computer queries now come from it.

DMV employees presently copy INS documents and send them to Sacramento, where employees check names and ''alien registration numbers'' against the 53 million INS records maintained by Lockheed-Martin Information Systems in Orlando, Fla. By the end of next year, however, DMV offices will be equipped to access the database directly.

The department estimates that it costs the state under a dollar to verify the status of the average applicant. But if an applicant's name doesn't show up in two electronic checks, it costs the federal agency roughly $5 for each manual inspection.

Ironically, at a time that Gov. Pete Wilson is still denouncing the federal government for forcing the state to shoulder various costs associated with illegal immigrants, the INS does the DMV checks for free.

California's license is considered ''tamper-proof'' because holograms, lamination and other secret features make it all but impossible to alter without destroying. Forgeries now available in immigrant communities might work for under-age drinkers but won't withstand visual scrutiny. Forgers have been unable to duplicate the information on magnetic stripes on the card's back.

Immigrant restrictionists such as Richard Lamm, a former governor of

Colorado, say the federal government should do to Social Security cards what California has done to its driver's licenses.

To prove how easy it is to get a phony Social Security card, Lamm went to a Denver flea market and got a bogus card that read ''Bill Clinton, 1600 Pennsylvania Avenue'' -- with no questions asked. On a recent stay at the White House, Lamm gave the card to the president.

''He was impressed, but he confiscated it and put it in his wallet,'' Lamm said with a laugh.

The Wilson administration also says the DMV's program should become a federal model.

''In 1993, we offered California as a pilot state for such a tamper-proof Social Security card program to the feds, but they never responded,'' said Jesus Arredondo, Wilson's press aide.

Aside from delays at the program's inception, DMV and INS officials say horror stories have been rare. But don't try telling to Bingfan Hoan, a 34-year-old immigrant from China.

When this bio-tech researcher moved to Cupertino from Denver in June 1994, she handed a local DMV clerk her Colorado driver's license and INS ''green card'' and was given a temporary license. She was told she'd soon get her permanent license in the mail.

Seventeen months later, she was still waiting. Hoan said she has been forced to go down to the DMV every two months to renew her temporary license. Finally, she said, she asked an employee what she could do and was given an 800 number in Sacramento that was always busy.

The lack of a permanent ID, she said, has made it nearly impossible for her to cash checks, since the photoless temporary license ''looks like a piece of paper.''

''I feel like it's just another way of California putting down immigrants,'' Hoan said. ''I feel like a second-class citizen.''

Immigrant-rights advocates say the law has also made it impossible for illegal immigrants to open a bank account or cash checks.

''I can't tell you how times we receive reports of immigrant workers who get mugged on Friday afternoons because people know they're carrying lots of cash,'' said Lina Avidan of the Coalition for Immigrant and Refugee Rights and Services in San Francisco. ''People shouldn't have to live underground. For survival purposes, people will drive, with or without a license.''

Because you need a license to get insurance, opponents say, the law is also exacerbating the problem of uninsured motorists.

Published 11/25/95 in the San Jose Mercury News.

June 6, 1995

Dear Member of Congress:

We are writing to express our concern that both Congress and the Administration are moving toward the implementation of a national worker registry. We believe such a plan put forward in the name of immigration control, is both misguided and dangerous for the following reasons:

It will not work. Those employers who rely on undocumented labor are already violating the law; they do so intentionally and are unlikely to use a verification system. Instead, they will continue to violate the law by hiring undocumented workers while employers who already comply with the law are subjected to new, costly requirements for the hiring process.

Faulty data. The data which a nationwide verification system would use would rely on two highly flawed data bases, one by the Social Security Administration (SSA) and the other the Immigration and Naturalization Service (INS). Both are notorious for containing incorrect or outdated information, with error rates as high as 28 percent. Roughly 65 million Americans either enter the work force or change jobs every year. Even an error rate of no higher than one percent would mean that 650,000 Americans could be denied jobs every year.

An unfunded mandate on employers. The creation of a national verification system for every workplace in America would present a huge administrative burden to the nation's employers, especially small business. All employers would be required to ask the federal government's permission every time they want to hire somebody. Americans want fewer burdensome regulations, not new ones.

A threat to privacy and civil rights. Worker registry proposals ask Congress to create a database of personal information on all Americans and make it accessible to all employers. The openness of the proposed systems raises barriers to controlling and monitoring the use of information. Such systems are prone to abuse by persons who use it to selectively screen individuals whose appearance, surname or accent suggests they are foreign or to screen such persons outside of the context of employment. In addition, government often lacks the political will to limit access to information once collected. Indeed, other purposes for the data base are already being proposed, including verifying eligibility for public benefits, tracking childhood immunizations, and tracking child support payments. Once a system of information on all Americans is in place, it will inevitably become ubiquitous in American life, presenting an enormous threat to the privacy and liberty of Americans.

We believe it is unwarranted and unwise to create a data system involving 100 percent of Americans in an effort to identify the 1.5 percent who live illegally in the United States. We urge you to oppose the creation of a nationwide verification system.

Sincerely,

NATIONAL ORGANIZATIONS

American Civil Liberties Union (ACLU)
American Father's Association
American Immigration Lawyers Association
Center for Democracy and Technology
Citizens for a Sound Economy
Immigration and Refugee Services of America
MALDEF, Los Angeles
National Asian Pacific American Legal Consortium
National Association of Korean Americans
National Council of La Raza
National Federation of Independent Business
Organization of Chinese Americans
Small Business Survival Committee
Southwest Voter Registration Education Project
U.S. Hispanic Chamber of Commerce

INDIVIDUALS

Martin Anderson, Hoover Institution
Stuart Anderson, Alexis de Tocqueville Institution
Ronald Bailey, Think Tank
Bernard Baltic, Reason Foundation
Gary Bauer, American Renewal
Douglas Besharov, American Enterprise Institute
Morton C. Blackwell, Conservative Leadership PAC
David Boaz, Cato Institute
Clint Bolick, Institute for Justice
Matthew Brooks, National Jewish Coalition
Phillip M. Burgess, Center for the New West
Merrick Carey, Alexis de Tocqueville Institution
Linda Chavez, Center for Equal Opportunity
Bryce Christensen, Editor, The Family in America
Jeff Eisenach, Progress & Freedom Foundation
Michael Farris, National Center for Home Education
Diana Furchtgett-Roth, American Enterprise Institute
Steve Gibson, Bionomics Institute
Stina Hans, Vista Hospital Systems
Robert B. Helms, American Enterprise Institute
Rick Henderson, Reason
John Hood, Bradley Fellow-Heritage Foundation
David Horowitz, Center for the Study of Popular Culture
Joseph J. Jacobs, Jacobs Engineering Group
Paul Jacobs, U.S. Term Limits
Kent Jeffreys, National Center for Policy Analysis
Thomas L. Jipping, Free Congress Foundation
Donna Kelch, YMCA, NY
Jack Kemp, Empower America
Manuel S. Klausner, Kindel & Anderson
David Koch, Koch Industries
William Kristol, Project for the Republican Future
James P. Lucier, Jr., Citizens Against a National Sales Tax/VAT
John McClaughry, Ethan Allen Institute
Donald N. McCloskey, Professor of Economics and History, University of Iowa
Michael T. McMenamin, Walter & Haverfield
William H. Mellor III, Institute for Justice
Stephen Moore, Cato Institute
Amy Moritz, National Center for Public Policy Research
Reverend Craig B. Mousin, United Methodist Church of Christ
Richard S. Newcombe, Creators Syndicate
Grover Norquist, Americans for Tax Reform
Walter K. Olson, Manhattan Institute
Ellen Frankel Paul, Social Philosophy & Policy Center at Bowling Green State University
Jeffrey Paul, Social Philosophy & Policy Center, Bowling Green State University
Sally Pipes, Pacific Research Institute
Joyce Antilla Phipps, Clinical Professor at Seton Hall University
Robert W. Poole, Jr., Reason Foundation
Steven R. Postrel, Graduate School of Management at the University of California at Irvine
Virginia Postrel, Reason Foundation
T.J. Rodgers, Cypress Semiconductor
Michael Rothschild, Bionomics Institute
Rev. Don Smith
Phyllis Schlafly, Eagle Forum
Dr. Christine Sierra, University of New Mexico
Julie Stewart, Families Against Mandatory Minimums
Ron K. Unz, Wall Street Analytics
Paul Weyrich, Free Congress Foundation
Richard J. Wilson, Professor, American University
Cathy Young, Women's Freedom Network
Benjamin Zycher, Department of Economics UCLA

LOCAL ORGANIZATIONS:

Albuquerque Border City Project
Asian Law Alliance
Asian Pacific American Legal Center of Southern California
Asylum and Refugee Rights Law Project
AYUDA
California Humane Development
Californians United for Equality
Center for Immigrant Rights
Chicago Coalition for Immigrant and Refugee Protection
Coalition for Humane Immigration Rights of Los Angeles (CHIRLA)
Coalition for Immigrant and Refugee Rights and Services
Dominican Sisters of San Rafael, CA
El Centro Hispanoamerico, NJ
Immigrant Legal Resource Center, San Francisco
Immigrant's Rights Project
Immigration Law Project
Independent Women's Forum
International Assistance Program of Alabama, Inc.
International Institute of Los Angeles
Korean Youth and Community Center, Los Angeles
Lawyer's Committee for Civil Rights
Legal Assistance Foundation, Legal Services Center
Massachusetts Immigrant and Refugee Advocacy Coalition, Boston
New York Immigration Coalition, NY
North Texas Immigration Coalition of Dallas
Northwest Immigrant's Rights Project
Pacific Research Institute
Proyecto Adelante
Proyecto Libertad, Texas
Riverside Language Project, New York
Santa Clara County Network for Immigrant & Refugee Rights & Services
Sponsors to Assist Refugees, Portland, OR
Travelers and Immigrants Aid

LA Times 8.3.94 A3

Asylum-Seekers Sue INS Over Delays

■ **Immigration:** Action alleges that 100,000 refugees, mostly in Southland, have been deprived of work permits because of agency errors and abuse. U.S. officials admit delays but defend their procedures.

By PATRICK J. McDONNELL
TIMES STAFF WRITERS

Bureaucratic bungling and abuse by the U.S. Immigration and Naturalization Service have resulted in tens of thousands of political asylum applicants wrongfully not receiving work permits, according to a federal class-action lawsuit filed Tuesday.

Court papers allege that a top INS official acknowledged in a meeting last week that about 60,000 political asylum applications had never been entered in the agency's computer database and were effectively "lost out in space." Frustrated asylum-seekers, the suit alleges, are often bounced randomly from one INS office to another, only to be told their files cannot be found.

Through abuse and incompetence, more than 100,000 people—mostly residing in Southern California—may have ultimately been deprived of working papers, says the American Civil Liberties Union of Southern California, one of seven civil rights groups filing Tuesday's action in U.S. District Court in Los Angeles. Many affected applications date from the 1980s.

The nine plaintiffs—all Central American refugees—are seeking a federal court injunction ordering the government to issue INS work authorizations to all legitimate asylum-seekers who have waited longer than the mandated 60- to 90-day period.

The job papers are vital to refugees, who are otherwise ineligible for work as their applications for political asylum are processed, which can drag on for years.

Current regulations guarantee the applicants' right to work while they await adjudication. But federal law also requires that employers check the documentation of all would-be workers.

The asylum lawsuit was filed a day before a government advisory panel, the U.S. Commission on Immigration Reform, is expected to recommend that Congress create a nationwide network enabling employers to verify job applicants' citizenship or immigration status. Some experts have suggested allowing employers to tap into an INS telephone-verification system. But critics say the chaotic state of asylum applications in California argues against such a notion.

'This lawsuit demonstrates once again that the INS is incompetent in maintaining its own records. Basing any information on the INS computer system is invalid.'

LUCAS GUTTENTAG
ACLU's Immigrants' Rights Project

"This lawsuit demonstrates once again that the INS is incompetent in maintaining its own records," said Lucas Guttentag, director of the ACLU's Immigrants' Rights Project. "Basing any information on the INS computer system is invalid."

INS officials, while declining to comment on the lawsuit, defended their procedures. But authorities acknowledged delays in the beleaguered political asylum process, now facing an ever-expanding backlog of more than 400,000 applications nationwide.

"It's a recurring workload, and inherent in that system, from time to time there are going to be delays," said Duke Austin, an INS spokesman.

A priority of federal authorities has long been the reduction of what they call widespread fraud in the political asylum process. Many illegal immigrants file frivolous asylum applications in an effort to gain working papers, officials say. The Clinton Administration is pursuing reforms aimed at rooting out fraud and expediting the process.

But Tuesday's action, activists say, involves applicants whose cases, according to the INS's own initial reviews, showed merit.

U.S. law makes political asylum available to foreign nationals who can demonstrate a "well-founded fear" of persecution in their homelands based on their race, religious or political beliefs or national origin.

The widespread INS delays in authorizing employment, the suit alleges, ultimately force many refugees into difficult choices: destitution, working illegally or returning to their homelands, where many say they face dire consequences.

"If I went back home, I'm sure I would be killed," said a 35-year-old Guatemalan native identified only as Jose, who wore a green paper mask during a Los Angeles news conference.

A Los Angeles factory worker and father of three, Jose said he concealed his identity Tuesday so his employer would not recognize him and possibly fire him. He is working without proper papers. Jose, a former accounting teacher in Guatemala City who says he fled after guerrillas attempted to recruit his students, has been waiting nine months for renewal of his INS work authorization.

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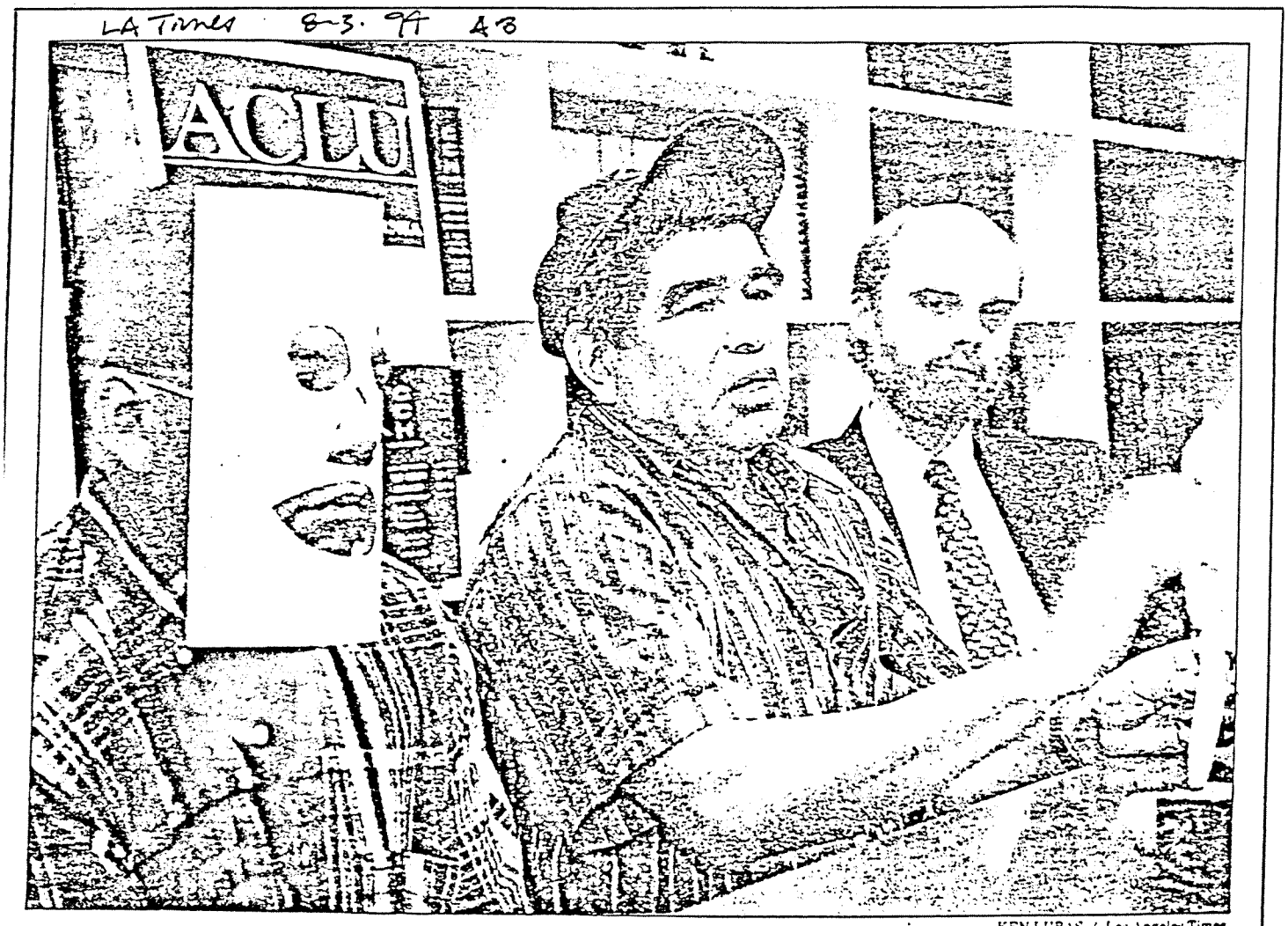

KEN LUBAS / Los Angeles Times

Asylum-seekers Jose, who is masked, and Andre Candido speak as Linton Joaquin, right, an attorney, listens.

The Sacramento Ci

If you like police states, you'll love national ID cards

By Glenn Garvin

IT WAS at a cabinet meeting early in the Reagan administration that Attorney General William French Smith first suggested a national identification card. That's the way to end illegal immigration, he argued: To get a job you'll have to show the ID card, and once there are no jobs, the immigrants will stop coming. It seemed logical. Then presidential assistant Martin Anderson spoke up.

"Mr. President, I would like to suggest another way that I think is a lot better," he counseled. "It's a lot cheaper. It can't be counterfeited. It's very lightweight, and impossible to lose. It's even waterproof. All we have to do is tattoo an identification number on the inside of everybody's arm."

Reagan snorted. "Maybe we should just brand all the babies," he jibed.

Glenn Garvin is a contributing editor of Reason magazine.

The idea was never taken seriously again. Until now. Two different immigration bills pending before congressional judiciary committees would require every American to apply for identity documents containing "biometric" identifiers – Washington-speak for fingerprints. (One is S 269 by Republican Sen. Alan Simpson of Wyoming; the other, HR 1915, is by Republican Rep. Lamar Smith of Texas.)

Here's how it would work. The ID would look very similar to a credit card, with a strip of magnetic tape across the back. Encoded on the tape, along with your Social Security number, is your thumbprint. A potential employer inserts your card in a computerized reader, then asks you to put your thumb on an optical scanner. The computer compares your thumb to the print on the card, and, if everything's OK, it phones a Social Security/Immigration and Naturalization Service computer in Washington, which decides whether you're eligible for a job.

THAT'S THE theory, anyway. The reality will be something else altogether. The Clinton administration has already tried a year-long experiment with using computerized INS data bases to determine worker eligibility. The result: 19 percent of the time the computer screwed up, withholding authorization from people who later turned out to be eligible to work.

An 81-percent success rate is pretty good if you're shooting basketball free throws. It's abysmally low when you're playing with people's lives. A General Accounting Office study in 1988 showed that about 65 million people in the United States change jobs or enter the work force each year. A 19-percent error rate would mean that 12.35 million Americans would be mistakenly refused permission to work. Even if the government bureaucracy whittles the error rate down to a minuscule 1 percent, that's still 650,000 people a year thrown out of work.

Of course, they'll get their jobs back. Eventually. When the computer goofed during the 1992 test, it took INS up to two weeks to search a job applicant's file by hand. And that was dealing with 2,668 searches over the course of a year. How long will the searches take when there are 650,000 a year? Six weeks? A month? Two months? And while the unlucky victims of the computer are waiting, who will pay their rent and buy their groceries?

There's another number tucked away in the footnotes of the 1992 study that's worth thinking about. A full nine months after the study was over, the fine print admitted that four cases were still "pending." These were four people ruled ineligible to work who protested that they had the proper documents. As the study noted parenthetically, "employee is waiting for appointment with INS, awaiting further documentation, etc." That is, they were tethered to the ninth circle of bureaucratic hell.

Not all the job losses will be accidental. Because the card will double as a work permit, the government will have a truly unprecedented power to punish those it decrees as anti-social. With a single keystroke, it can instantly destroy their ability to earn a living.

How long before someone proposes suspending the right to work for two years for anyone convicted of wife-beating, "hate speech" or owning an assault weapon? What kind of suspension of the work permit do you think some politicians will want for violation of the sodomy laws or flag-burning? How long before both parties agree that Americans should have to pass a drug test each year to keep their right to work?

The really amazing thing about this is that our politicians are willing to send us marching into this morass over a problem that by any objective accounting is a tiny one. Estimates of the illegal immigrant population of the United States run between 3 million and 4 million, out of a U.S. population of 260 million. That means perhaps 1.5 percent of the U.S. population is illegal. Is that really worth punishing the other 98.5 percent?

Reason

Background: The National Registry Proposal and INS Data

In addition to the numerous fundamental privacy issues implicated by the national registry proposal, there are very practical reasons why the Commission's proposal for a national registry is a recipe for disaster. The proposed system is based on a foundation of quicksand, namely the horrendous state of INS's data base. There's an old saying in the computer world that if you put garbage in, you get garbage out. That is precisely the case with INS's computerized data.

I want to give just a few examples -- and I have many -- to illustrate what we have learned through litigation over the last several years when we have had the power to compel the INS to testify about, and to obtain documents revealing, the condition of INS data records. This demonstrates why we are not being hyperbolic when we say that it would be completely irresponsible to let anyone's rights be determined by INS's computerized data.

First, INS data is so incomplete as to be meaningless as a measure of who is entitled to work or live in the United States.

For example, in Los Angeles, the largest INS district in the country, the INS is routinely denying employment authorization to asylum applicants legally entitled to work because their names do not appear on the INS computer. Yet at a public meeting a highranking local INS official admitted that over 60,000 files had been "lost out in space" and never entered into the computer that is supposed to identify every asylum applicant and that is used to determine who is granted employment authorization. We filed a suit the day before Barbara Jordan testified in Congress about the Commission's proposal.

In New York, we have been litigating similar problems for over four years. In that case, a high-ranking INS official in Washington (Fall '92) continually assured us that their computer records were accurate. Yet, when the suit forced INS to conduct a hand audit of their files they admitted that 4,000 files had not been entered into the computer. (May and August '93.) Now INS again claims that all files have been entered but applicants in New York who can prove that they have submitted applications are still being denied employment authorization because no record of their case is in computer. When we went back to court with our evidence just three weeks ago, a federal judge asked us in open court (and I am paraphrasing just a bit): "Do you get the impression that the INS is deliberately recalcitrant, that they are unbelievably inefficient, or that they just don't care?"

Second, when the INS gets around to inputting information it does so incompetently. As a result, the computer cannot locate information even when it exists.

For example, in 1991 we obtained copies of the computer disks that the INS had created to identify and track the 50,000 individuals covered by the settlement of a lawsuit. The two critical pieces of identifying information about each person in the INS computer are the persons name and their "A-number," the "alien number" assigned

by the INS. When our computer expert reviewed the INS disks, she said the data was virtually useless. I brought her sworn statement, which says that

-the INS had routinely entered the first and last names in the wrong order and that a name search was impossible

-that in many cases the INS had entered the critical A-number without the A or with another letter so that a search by A-number was impossible, and

-that data was repeatedly entered into the wrong data field, that misspellings were rampant, and that numbers were often used in place of letters.

Third and finally, even if all the existing INS data could be cleaned up, the agency is notorious for being incapable of maintaining its records.

For example, in Feb. 94, the INS informed us that it would no longer terminate cases when applicants failed to appear for interviews because it had no way to know whether the INS had updated its computer records to reflect change of address forms sent in by applicants. In fact, through litigation we know that the INS has no system for inputting changes of address, that changes of address sit in a drawer for untold periods of time, that there are no records of how many changes of address are pending or which have been entered, and that change of address notices are routinely thrown away so that it is impossible for applicants to prove that they sent in a form.

In a related example, we learned through deposition testimony last summer that INS data inputting of 89,000 cases in the Green Card Replacement Program had not distinguished between people who had paid their $70 filing fees in cash and those who had been granted fee waivers. In other words, the INS could not determine whether $6 million in fees had been received in cash or not received at all. As a result of the lawsuit, INS said it was planning to hand count all 89,000 files.

In closing, let me just quote from the March 30, 1993 congressional testimony of the Dept of Justice Inspector General. He said that "The INS lacks methods to collect information, to sort it, to analyze it, to verify it, and it lacks the coordinative and planning capabilities to use information, even if available."

That statement is no less true today than it was a year and a half ago. Yet the Commission on Immigration Reform and others persist in pretending that a national registry can be constructed using INS data. The notion that the information collected and maintained by this agency should determine who is allowed to work, and ultimately to live, in the United States, is ill-informed, misguided and irresponsible.

Background Statement of Lucas Guttentag, Director September 30, 1994

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THE TVS PILOT IS COSTLY TO BUSINESS

TVS is in addition to existing I-9 requirements. The telephone verification system pilot is not a substitute for existing legal requirements, including the I-9 procedures mandated for all new hires. Therefore, employers in a pilot would have to absorb not only existing administrative expenses (human resources time, delays in processing new hires, etc.) but added administrative expenses for TVS.

Employer administrative costs for each TVS inquiry are high -- averaging $10.70 in the first TVS pilot. One company's average cost per inquiry was $19.20. Remember, these are costs in addition to those involved in administering existing I-9 requirements.

Costs will be even higher if INS does not subsidize pilot participants. Employer cost estimates in the first pilot did not include certain costs absorbed by the INS. These included $775 for each point-of-sale device and printer for accessing TVS, 23 cents per inquiry charged by the TVS contractor, and certain travel and training costs. There is no guarantee that the INS would absorb such costs for future pilots. Indeed, AB 507 imposes equipment and per-transaction fees directly on employers.

Costs of training employees who would later have to be discharged could be exorbitant. In the first TVS pilot, secondary verification was required 28 percent of the time. Secondary verification is a period of up to ten days or longer during which an employer may not legally delay, deny, or terminate a new hire. In the first pilot, 42 percent of secondary verifications came back "unauthorized for employment." In other words, an employer would be required to terminate a new hire after having invested in salary, training, and orientation for ten days or more.

TVS imposes a greater burden on employers in enforcing laws against employment of certain immigrants. Remember, all of the employees that would have to be terminated after secondary verification (regardless of invested costs) are new hires who passed ordinary I-9 procedures. Under current law, an employer would not have to fire these employees unless he or she became aware that they were unauthorized for employment. Moreover, the employer would have a defense to any IRCA violation based on good faith compliance with I-9 procedures.

Any short cuts to avoid hiring ineligible employees would subject employers to costly discrimination claims. Under TVS, employers cannot make an eligibility inquiry until an employee is hired. Thus, employers are virtually mandated to pay people while they wait on secondary verification. Moreover, any employer who simply decides not to hire those who appear to be immigrants would face severe penalties for national origin or alienage discrimination. This is because such short cuts harm employment-eligible U.S. citizens and immigrants. In the first TVS pilot, while 42 percent of secondary verifications came back ineligible, more than half of secondary verifications were for eligible immigrants, who could sue any employer who discriminated either before or after any initial TVS inquiry.

lth California's economy still continuing to recover, we do not need the state legislature to lunteer to impose greater costs upon California employers.